

106TH CONGRESS
1ST SESSION

S. 240

To amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. DASCHLE (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Patients’ Bill of Rights Act of 1999”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—HEALTH INSURANCE BILL OF RIGHTS

Subtitle A—Access to Care

- Sec. 101. Access to emergency care.
- Sec. 102. Offering of choice of coverage options under group health plans.
- Sec. 103. Choice of providers.
- Sec. 104. Access to specialty care.
- Sec. 105. Continuity of care.
- Sec. 106. Coverage for individuals participating in approved clinical trials.
- Sec. 107. Access to needed prescription drugs.
- Sec. 108. Adequacy of provider network.
- Sec. 109. Nondiscrimination in delivery of services.

Subtitle B—Quality Assurance

- Sec. 111. Internal quality assurance program.
- Sec. 112. Collection of standardized data.
- Sec. 113. Process for selection of providers.
- Sec. 114. Drug utilization program.
- Sec. 115. Standards for utilization review activities.
- Sec. 116. Health Care Quality Advisory Board.

Subtitle C—Patient Information

- Sec. 121. Patient information.
- Sec. 122. Protection of patient confidentiality.
- Sec. 123. Health insurance ombudsmen.

Subtitle D—Grievance and Appeals Procedures

- Sec. 131. Establishment of grievance process.
- Sec. 132. Internal appeals of adverse determinations.
- Sec. 133. External appeals of adverse determinations.

Subtitle E—Protecting the Doctor-Patient Relationship

- Sec. 141. Prohibition of interference with certain medical communications.
- Sec. 142. Prohibition against transfer of indemnification or improper incentive arrangements.
- Sec. 143. Additional rules regarding participation of health care professionals.
- Sec. 144. Protection for patient advocacy.

Subtitle F—Promoting Good Medical Practice

- Sec. 151. Promoting good medical practice.
- Sec. 152. Standards relating to benefits for certain breast cancer treatment.

Subtitle G—Definitions

- Sec. 191. Definitions.
- Sec. 192. Preemption; State flexibility; construction.
- Sec. 193. Regulations.

TITLE II—APPLICATION OF PATIENT PROTECTION STANDARDS TO GROUP HEALTH PLANS AND HEALTH INSURANCE COV- ERAGE UNDER PUBLIC HEALTH SERVICE ACT

- Sec. 201. Application to group health plans and group health insurance coverage.
- Sec. 202. Application to individual health insurance coverage.

TITLE III—AMENDMENTS TO THE EMPLOYEE RETIREMENT
INCOME SECURITY ACT OF 1974

Sec. 301. Application of patient protection standards to group health plans and group health insurance coverage under the Employee Retirement Income Security Act of 1974.

Sec. 302. ERISA preemption not to apply to certain actions involving health insurance policyholders.

TITLE IV—EFFECTIVE DATES; COORDINATION IN
IMPLEMENTATION

Sec. 401. Effective dates and related rules.

Sec. 402. Coordination in implementation.

1 **TITLE I—HEALTH INSURANCE**
2 **BILL OF RIGHTS**
3 **Subtitle A—Access to Care**

4 **SEC. 101. ACCESS TO EMERGENCY CARE.**

5 (a) COVERAGE OF EMERGENCY SERVICES.—

6 (1) IN GENERAL.—If a group health plan, or
7 health insurance coverage offered by a health insur-
8 ance issuer, provides any benefits with respect to
9 emergency services (as defined in paragraph (2)(B)),
10 the plan or issuer shall cover emergency services fur-
11 nished under the plan or coverage—

12 (A) without the need for any prior author-
13 ization determination;

14 (B) whether or not the health care pro-
15 vider furnishing such services is a participating
16 provider with respect to such services;

17 (C) in a manner so that, if such services
18 are provided to a participant, beneficiary, or en-
19 rollee by a nonparticipating health care provider

without prior authorization by the plan or issuer, the participant, beneficiary, or enrollee is not liable for amounts that exceed the amounts of liability that would be incurred if the services were provided by a participating health care provider with prior authorization by the plan or issuer; and

(D) without regard to any other term or condition of such coverage (other than exclusion or coordination of benefits, or an affiliation or waiting period, permitted under section 2701 of the Public Health Service Act or section 701 of the Employee Retirement Income Security Act of 1974, and other than applicable cost-sharing).

(2) DEFINITIONS.—In this section:

(A) EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON STANDARD.—The term “emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a

1 condition described in clause (i), (ii), or (iii) of
2 section 1867(e)(1)(A) of the Social Security
3 Act.

4 (B) EMERGENCY SERVICES.—The term
5 “emergency services” means—

6 (i) a medical screening examination
7 (as required under section 1867 of the So-
8 cial Security Act) that is within the capa-
9 bility of the emergency department of a
10 hospital, including ancillary services rou-
11 tinely available to the emergency depart-
12 ment to evaluate an emergency medical
13 condition (as defined in subparagraph
14 (A)), and

15 (ii) within the capabilities of the staff
16 and facilities available at the hospital, such
17 further medical examination and treatment
18 as are required under section 1867 of such
19 Act to stabilize the patient.

20 (b) REIMBURSEMENT FOR MAINTENANCE CARE AND
21 POST-STABILIZATION CARE.—In the case of services
22 (other than emergency services) for which benefits are
23 available under a group health plan, or under health insur-
24 ance coverage offered by a health insurance issuer, the
25 plan or issuer shall provide for reimbursement with re-

1 spect to such services provided to a participant, bene-
 2 ficiary, or enrollee other than through a participating
 3 health care provider in a manner consistent with sub-
 4 section (a)(1)(C) (and shall otherwise comply with the
 5 guidelines established under section 1852(d)(2) of the So-
 6 cial Security Act (relating to promoting efficient and time-
 7 ly coordination of appropriate maintenance and post-sta-
 8 bilization care of an enrollee after an enrollee has been
 9 determined to be stable), or, in the absence of guidelines
 10 under such section, such guidelines as the Secretary shall
 11 establish to carry out this subsection), if the services are
 12 maintenance care or post-stabilization care covered under
 13 such guidelines.

14 **SEC. 102. OFFERING OF CHOICE OF COVERAGE OPTIONS**
 15 **UNDER GROUP HEALTH PLANS.**

16 (a) REQUIREMENT.—

17 (1) OFFERING OF POINT-OF-SERVICE COV-
 18 ERAGE OPTION.—Except as provided in paragraph
 19 (2), if a group health plan (or health insurance cov-
 20 erage offered by a health insurance issuer in connec-
 21 tion with a group health plan) provides benefits only
 22 through participating health care providers, the plan
 23 or issuer shall offer the participant the option to
 24 purchase point-of-service coverage (as defined in
 25 subsection (b)) for all such benefits for which cov-

1 erage is otherwise so limited. Such option shall be
 2 made available to the participant at the time of en-
 3 rollment under the plan or coverage and at such
 4 other times as the plan or issuer offers the partici-
 5 pant a choice of coverage options.

6 (2) EXCEPTION.—Paragraph (1) shall not
 7 apply with respect to a participant in a group health
 8 plan if the plan offers the participant a choice of
 9 health insurance coverage.

10 (b) POINT-OF-SERVICE COVERAGE DEFINED.—In
 11 this section, the term “point-of-service coverage” means,
 12 with respect to benefits covered under a group health plan
 13 or health insurance issuer, coverage of such benefits when
 14 provided by a nonparticipating health care provider. Such
 15 coverage need not include coverage of providers that the
 16 plan or issuer excludes because of fraud, quality, or similar
 17 reasons.

18 (c) CONSTRUCTION.—Nothing in this section shall be
 19 construed—

20 (1) as requiring coverage for benefits for a par-
 21 ticular type of health care provider;

22 (2) as requiring an employer to pay any costs
 23 as a result of this section or to make equal contribu-
 24 tions with respect to different health coverage op-
 25 tions; or

1 (3) as preventing a group health plan or health
 2 insurance issuer from imposing higher premiums or
 3 cost-sharing on a participant for the exercise of a
 4 point-of-service coverage option.

5 (d) NO REQUIREMENT FOR GUARANTEED AVAIL-
 6 ABILITY.—If a health insurance issuer offers health insur-
 7 ance coverage that includes point-of-service coverage with
 8 respect to an employer solely in order to meet the require-
 9 ment of subsection (a), nothing in section 2711(a)(1)(A)
 10 of the Public Health Service Act shall be construed as re-
 11 quiring the offering of such coverage with respect to an-
 12 other employer.

13 **SEC. 103. CHOICE OF PROVIDERS.**

14 (a) PRIMARY CARE.—A group health plan, and a
 15 health insurance issuer that offers health insurance cov-
 16 erage, shall permit each participant, beneficiary, and en-
 17 rollee to receive primary care from any participating pri-
 18 mary care provider who is available to accept such individ-
 19 ual.

20 (b) SPECIALISTS.—

21 (1) IN GENERAL.—Subject to paragraph (2), a
 22 group health plan and a health insurance issuer that
 23 offers health insurance coverage shall permit each
 24 participant, beneficiary, or enrollee to receive medi-
 25 cally necessary or appropriate specialty care, pursu-

1 ant to appropriate referral procedures, from any
 2 qualified participating health care provider who is
 3 available to accept such individual for such care.

4 (2) LIMITATION.—Paragraph (1) shall not
 5 apply to specialty care if the plan or issuer clearly
 6 informs participants, beneficiaries, and enrollees of
 7 the limitations on choice of participating providers
 8 with respect to such care.

9 **SEC. 104. ACCESS TO SPECIALTY CARE.**

10 (a) OBSTETRICAL AND GYNECOLOGICAL CARE.—

11 (1) IN GENERAL.—If a group health plan, or a
 12 health insurance issuer in connection with the provi-
 13 sion of health insurance coverage, requires or pro-
 14 vides for a participant, beneficiary, or enrollee to
 15 designate a participating primary care provider—

16 (A) the plan or issuer shall permit such an
 17 individual who is a female to designate a par-
 18 ticipating physician who specializes in obstetrics
 19 and gynecology as the individual’s primary care
 20 provider; and

21 (B) if such an individual has not des-
 22 ignated such a provider as a primary care pro-
 23 vider, the plan or issuer—

24 (i) may not require authorization or a
 25 referral by the individual’s primary care

1 provider or otherwise for coverage of rou-
 2 tine gynecological care (such as preventive
 3 women's health examinations) and preg-
 4 nancy-related services provided by a par-
 5 ticipating health care professional who spe-
 6 cializes in obstetrics and gynecology to the
 7 extent such care is otherwise covered, and

8 (ii) may treat the ordering of other
 9 gynecological care by such a participating
 10 health professional as the authorization of
 11 the primary care provider with respect to
 12 such care under the plan or coverage.

13 (2) CONSTRUCTION.—Nothing in paragraph
 14 (1)(B)(ii) shall waive any requirements of coverage
 15 relating to medical necessity or appropriateness with
 16 respect to coverage of gynecological care so ordered.

17 (b) PEDIATRIC CARE.—If a group health plan, or a
 18 health insurance issuer in connection with the provision
 19 of health insurance coverage, requires or provides for a
 20 participant, beneficiary, or enrollee to designate a partici-
 21 pating primary care provider for a child of such partici-
 22 pant, beneficiary, or enrollee, the plan or issuer shall per-
 23 mit the participant, beneficiary, or enrollee to designate
 24 a physician who specializes in pediatrics as the child's pri-
 25 mary care provider.

1 (c) SPECIALTY CARE.—

2 (1) SPECIALTY CARE FOR COVERED SERV-
3 ICES.—

4 (A) IN GENERAL.—If—

5 (i) an individual is a participant or
6 beneficiary under a group health plan or
7 an enrollee who is covered under health in-
8 surance coverage offered by a health insur-
9 ance issuer,

10 (ii) the individual has a condition or
11 disease of sufficient seriousness and com-
12 plexity to require treatment by a specialist,
13 and

14 (iii) benefits for such treatment are
15 provided under the plan or coverage,

16 the plan or issuer shall make or provide for a
17 referral to a specialist who is available and ac-
18 cessible to provide the treatment for such condi-
19 tion or disease.

20 (B) SPECIALIST DEFINED.—For purposes
21 of this subsection, the term “specialist” means,
22 with respect to a condition, a health care practi-
23 tioner, facility, or center (such as a center of
24 excellence) that has adequate expertise through
25 appropriate training and experience (including,

1 in the case of a child, appropriate pediatric ex-
2 pertise) to provide high quality care in treating
3 the condition.

4 (C) CARE UNDER REFERRAL.—A group
5 health plan or health insurance issuer may re-
6 quire that the care provided to an individual
7 pursuant to such referral under subparagraph
8 (A) be—

9 (i) pursuant to a treatment plan, only
10 if the treatment plan is developed by the
11 specialist and approved by the plan or
12 issuer, in consultation with the designated
13 primary care provider or specialist and the
14 individual (or the individual's designee),
15 and

16 (ii) in accordance with applicable
17 quality assurance and utilization review
18 standards of the plan or issuer.

19 Nothing in this subsection shall be construed as
20 preventing such a treatment plan for an individ-
21 ual from requiring a specialist to provide the
22 primary care provider with regular updates on
23 the specialty care provided, as well as all nec-
24 essary medical information.

(D) REFERRALS TO PARTICIPATING PROVIDERS.—A group health plan or health insurance issuer is not required under subparagraph (A) to provide for a referral to a specialist that is not a participating provider, unless the plan or issuer does not have an appropriate specialist that is available and accessible to treat the individual's condition and that is a participating provider with respect to such treatment.

(E) TREATMENT OF NONPARTICIPATING PROVIDERS.—If a plan or issuer refers an individual to a nonparticipating specialist pursuant to subparagraph (A), services provided pursuant to the approved treatment plan (if any) shall be provided at no additional cost to the individual beyond what the individual would otherwise pay for services received by such a specialist that is a participating provider.

(2) SPECIALISTS AS PRIMARY CARE PROVIDERS.—

(A) IN GENERAL.—A group health plan, or a health insurance issuer, in connection with the provision of health insurance coverage, shall have a procedure by which an individual who is a participant, beneficiary, or enrollee and who

1 has an ongoing special condition (as defined in
2 subparagraph (C)) may receive a referral to a
3 specialist for such condition who shall be re-
4 sponsible for and capable of providing and co-
5 ordinating the individual's primary and spe-
6 cialty care. If such an individual's care would
7 most appropriately be coordinated by such a
8 specialist, such plan or issuer shall refer the in-
9 dividual to such specialist.

10 (B) TREATMENT AS PRIMARY CARE PRO-
11 VIDER.—Such specialist shall be permitted to
12 treat the individual without a referral from the
13 individual's primary care provider and may au-
14 thorize such referrals, procedures, tests, and
15 other medical services as the individual's pri-
16 mary care provider would otherwise be per-
17 mitted to provide or authorize, subject to the
18 terms of the treatment plan (referred to in
19 paragraph (1)(C)(i)).

20 (C) ONGOING SPECIAL CONDITION DE-
21 FINED.—In this paragraph, the term “special
22 condition” means a condition or disease that—

23 (i) is life-threatening, degenerative, or
24 disabling, and

1 (ii) requires specialized medical care
2 over a prolonged period of time.

3 (D) TERMS OF REFERRAL.—The provi-
4 sions of subparagraphs (C) through (E) of
5 paragraph (1) apply with respect to referrals
6 under subparagraph (A) of this paragraph in
7 the same manner as they apply to referrals
8 under paragraph (1)(A).

9 (3) STANDING REFERRALS.—

10 (A) IN GENERAL.—A group health plan,
11 and a health insurance issuer in connection
12 with the provision of health insurance coverage,
13 shall have a procedure by which an individual
14 who is a participant, beneficiary, or enrollee
15 and who has a condition that requires ongoing
16 care from a specialist may receive a standing
17 referral to such specialist for treatment of such
18 condition. If the plan or issuer, or if the pri-
19 mary care provider in consultation with the
20 medical director of the plan or issuer and the
21 specialist (if any), determines that such a
22 standing referral is appropriate, the plan or
23 issuer shall make such a referral to such a spe-
24 cialist.

(B) TERMS OF REFERRAL.—The provisions of subparagraphs (C) through (E) of paragraph (1) apply with respect to referrals under subparagraph (A) of this paragraph in the same manner as they apply to referrals under paragraph (1)(A).

SEC. 105. CONTINUITY OF CARE.

(a) IN GENERAL.—

(1) TERMINATION OF PROVIDER.—If a contract between a group health plan, or a health insurance issuer in connection with the provision of health insurance coverage, and a health care provider is terminated (as defined in paragraph (3)), or benefits or coverage provided by a health care provider are terminated because of a change in the terms of provider participation in a group health plan, and an individual who is a participant, beneficiary, or enrollee in the plan or coverage is undergoing a course of treatment from the provider at the time of such termination, the plan or issuer shall—

(A) notify the individual on a timely basis of such termination, and

(B) subject to subsection (c), permit the individual to continue or be covered with respect to the course of treatment with the pro-

1 vider during a transitional period (provided
2 under subsection (b)).

3 (2) TREATMENT OF TERMINATION OF CON-
4 TRACT WITH HEALTH INSURANCE ISSUER.—If a
5 contract for the provision of health insurance cov-
6 erage between a group health plan and a health in-
7 surance issuer is terminated and, as a result of such
8 termination, coverage of services of a health care
9 provider is terminated with respect to an individual,
10 the provisions of paragraph (1) (and the succeeding
11 provisions of this section) shall apply under the plan
12 in the same manner as if there had been a contract
13 between the plan and the provider that had been ter-
14 minated, but only with respect to benefits that are
15 covered under the plan after the contract termi-
16 nation.

17 (3) TERMINATION.—In this section, the term
18 “terminated” includes, with respect to a contract,
19 the expiration or nonrenewal of the contract, but
20 does not include a termination of the contract by the
21 plan or issuer for failure to meet applicable quality
22 standards or for fraud.

23 (b) TRANSITIONAL PERIOD.—

24 (1) IN GENERAL.—Except as provided in para-
25 graphs (2) through (4), the transitional period under

1 this subsection shall extend for at least 90 days from
 2 the date of the notice described in subsection
 3 (a)(1)(A) of the provider's termination.

4 (2) INSTITUTIONAL CARE.—The transitional pe-
 5 riod under this subsection for institutional or inpa-
 6 tient care from a provider shall extend until the dis-
 7 charge or termination of the period of institutional-
 8 ization and also shall include institutional care pro-
 9 vided within a reasonable time of the date of termi-
 10 nation of the provider status if the care was sched-
 11 uled before the date of the announcement of the ter-
 12 mination of the provider status under subsection
 13 (a)(1)(A) or if the individual on such date was on
 14 an established waiting list or otherwise scheduled to
 15 have such care.

16 (3) PREGNANCY.—If—

17 (A) a participant, beneficiary, or enrollee
 18 has entered the second trimester of pregnancy
 19 at the time of a provider's termination of par-
 20 ticipation, and

21 (B) the provider was treating the preg-
 22 nancy before date of the termination,

23 the transitional period under this subsection with re-
 24 spect to provider's treatment of the pregnancy shall

1 extend through the provision of post-partum care di-
 2 rectly related to the delivery.

3 (4) TERMINAL ILLNESS.—If—

4 (A) a participant, beneficiary, or enrollee
 5 was determined to be terminally ill (as deter-
 6 mined under section 1861(dd)(3)(A) of the So-
 7 cial Security Act) at the time of a provider’s
 8 termination of participation, and

9 (B) the provider was treating the terminal
 10 illness before the date of termination,
 11 the transitional period under this subsection shall
 12 extend for the remainder of the individual’s life for
 13 care directly related to the treatment of the terminal
 14 illness.

15 (c) PERMISSIBLE TERMS AND CONDITIONS.—A
 16 group health plan or health insurance issuer may condi-
 17 tion coverage of continued treatment by a provider under
 18 subsection (a)(1)(B) upon the provider agreeing to the fol-
 19 lowing terms and conditions:

20 (1) The provider agrees to accept reimburse-
 21 ment from the plan or issuer and individual involved
 22 (with respect to cost-sharing) at the rates applicable
 23 prior to the start of the transitional period as pay-
 24 ment in full (or, in the case described in subsection
 25 (a)(2), at the rates applicable under the replacement

1 plan or issuer after the date of the termination of
 2 the contract with the health insurance issuer) and
 3 not to impose cost-sharing with respect to the indi-
 4 vidual in an amount that would exceed the cost-shar-
 5 ing that could have been imposed if the contract re-
 6 ferred to in subsection (a)(1) had not been termi-
 7 nated.

8 (2) The provider agrees to adhere to the quality
 9 assurance standards of the plan or issuer responsible
 10 for payment under paragraph (1) and to provide to
 11 such plan or issuer necessary medical information
 12 related to the care provided.

13 (3) The provider agrees otherwise to adhere to
 14 such plan's or issuer's policies and procedures, in-
 15 cluding procedures regarding referrals and obtaining
 16 prior authorization and providing services pursuant
 17 to a treatment plan (if any) approved by the plan or
 18 issuer.

19 (d) CONSTRUCTION.—Nothing in this section shall be
 20 construed to require the coverage of benefits which would
 21 not have been covered if the provider involved remained
 22 a participating provider.

23 **SEC. 106. COVERAGE FOR INDIVIDUALS PARTICIPATING IN**
 24 **APPROVED CLINICAL TRIALS.**

25 (a) COVERAGE.—

1 (1) IN GENERAL.—If a group health plan, or
2 health insurance issuer that is providing health in-
3 surance coverage, provides coverage to a qualified in-
4 dividual (as defined in subsection (b)), the plan or
5 issuer—

6 (A) may not deny the individual participa-
7 tion in the clinical trial referred to in subsection
8 (b)(2);

9 (B) subject to subsection (c), may not deny
10 (or limit or impose additional conditions on) the
11 coverage of routine patient costs for items and
12 services furnished in connection with participa-
13 tion in the trial; and

14 (C) may not discriminate against the indi-
15 vidual on the basis of the enrollee’s participa-
16 tion in such trial.

17 (2) EXCLUSION OF CERTAIN COSTS.—For pur-
18 poses of paragraph (1)(B), routine patient costs do
19 not include the cost of the tests or measurements
20 conducted primarily for the purpose of the clinical
21 trial involved.

22 (3) USE OF IN-NETWORK PROVIDERS.—If one
23 or more participating providers is participating in a
24 clinical trial, nothing in paragraph (1) shall be con-
25 strued as preventing a plan or issuer from requiring

1 that a qualified individual participate in the trial
 2 through such a participating provider if the provider
 3 will accept the individual as a participant in the
 4 trial.

5 (b) QUALIFIED INDIVIDUAL DEFINED.—For pur-
 6 poses of subsection (a), the term “qualified individual”
 7 means an individual who is a participant or beneficiary
 8 in a group health plan, or who is an enrollee under health
 9 insurance coverage, and who meets the following condi-
 10 tions:

11 (1)(A) The individual has a life-threatening or
 12 serious illness for which no standard treatment is ef-
 13 fective.

14 (B) The individual is eligible to participate in
 15 an approved clinical trial according to the trial pro-
 16 tocol with respect to treatment of such illness.

17 (C) The individual’s participation in the trial
 18 offers meaningful potential for significant clinical
 19 benefit for the individual.

20 (2) Either—

21 (A) the referring physician is a participat-
 22 ing health care professional and has concluded
 23 that the individual’s participation in such trial
 24 would be appropriate based upon the individual

1 meeting the conditions described in paragraph
 2 (1); or

3 (B) the participant, beneficiary, or enrollee
 4 provides medical and scientific information es-
 5 tablishing that the individual's participation in
 6 such trial would be appropriate based upon the
 7 individual meeting the conditions described in
 8 paragraph (1).

9 (c) PAYMENT.—

10 (1) IN GENERAL.—Under this section a group
 11 health plan or health insurance issuer shall provide
 12 for payment for routine patient costs described in
 13 subsection (a)(2) but is not required to pay for costs
 14 of items and services that are reasonably expected
 15 (as determined by the Secretary) to be paid for by
 16 the sponsors of an approved clinical trial.

17 (2) PAYMENT RATE.—In the case of covered
 18 items and services provided by—

19 (A) a participating provider, the payment
 20 rate shall be at the agreed upon rate, or

21 (B) a nonparticipating provider, the pay-
 22 ment rate shall be at the rate the plan or issuer
 23 would normally pay for comparable services
 24 under subparagraph (A).

25 (d) APPROVED CLINICAL TRIAL DEFINED.—

1 (1) IN GENERAL.—In this section, the term
 2 “approved clinical trial” means a clinical research
 3 study or clinical investigation approved and funded
 4 (which may include funding through in-kind con-
 5 tributions) by one or more of the following:

6 (A) The National Institutes of Health.

7 (B) A cooperative group or center of the
 8 National Institutes of Health.

9 (C) Either of the following if the condi-
 10 tions described in paragraph (2) are met:

11 (i) The Department of Veterans Af-
 12 fairs.

13 (ii) The Department of Defense.

14 (2) CONDITIONS FOR DEPARTMENTS.—The
 15 conditions described in this paragraph, for a study
 16 or investigation conducted by a Department, are
 17 that the study or investigation has been reviewed
 18 and approved through a system of peer review that
 19 the Secretary determines—

20 (A) to be comparable to the system of peer
 21 review of studies and investigations used by the
 22 National Institutes of Health, and

23 (B) assures unbiased review of the highest
 24 scientific standards by qualified individuals who
 25 have no interest in the outcome of the review.

1 (e) CONSTRUCTION.—Nothing in this section shall be
 2 construed to limit a plan’s or issuer’s coverage with re-
 3 spect to clinical trials.

4 **SEC. 107. ACCESS TO NEEDED PRESCRIPTION DRUGS.**

5 (a) IN GENERAL.—If a group health plan, or health
 6 insurance issuer that offers health insurance coverage,
 7 provides benefits with respect to prescription drugs but
 8 the coverage limits such benefits to drugs included in a
 9 formulary, the plan or issuer shall—

10 (1) ensure participation of participating physi-
 11 cians and pharmacists in the development of the for-
 12 mulary;

13 (2) disclose to providers and, disclose upon re-
 14 quest under section 121(c)(6) to participants, bene-
 15 ficiaries, and enrollees, the nature of the formulary
 16 restrictions; and

17 (3) consistent with the standards for a utiliza-
 18 tion review program under section 115, provide for
 19 exceptions from the formulary limitation when a
 20 non-formulary alternative is medically indicated.

21 (b) COVERAGE OF APPROVED DRUGS AND MEDICAL
 22 DEVICES.—

23 (1) IN GENERAL.—A group health plan (or
 24 health insurance coverage offered in connection with
 25 such a plan) that provides any coverage of prescrip-

1 tion drugs or medical devices shall not deny coverage
2 of such a drug or device on the basis that the use
3 is investigational, if the use—

4 (A) in the case of a prescription drug—

5 (i) is included in the labeling author-
6 ized by the application in effect for the
7 drug pursuant to subsection (b) or (j) of
8 section 505 of the Federal Food, Drug,
9 and Cosmetic Act, without regard to any
10 postmarketing requirements that may
11 apply under such Act; or

12 (ii) is included in the labeling author-
13 ized by the application in effect for the
14 drug under section 351 of the Public
15 Health Service Act, without regard to any
16 postmarketing requirements that may
17 apply pursuant to such section; or

18 (B) in the case of a medical device, is in-
19 cluded in the labeling authorized by a regula-
20 tion under subsection (d) or (3) of section 513
21 of the Federal Food, Drug, and Cosmetic Act,
22 an order under subsection (f) of such section, or
23 an application approved under section 515 of
24 such Act, without regard to any postmarketing
25 requirements that may apply under such Act.

1 (2) CONSTRUCTION.—Nothing in this sub-
2 section shall be construed as requiring a group
3 health plan (or health insurance coverage offered in
4 connection with such a plan) to provide any coverage
5 of prescription drugs or medical devices.

6 **SEC. 108. ADEQUACY OF PROVIDER NETWORK.**

7 (a) IN GENERAL.—Each group health plan, and each
8 health insurance issuer offering health insurance coverage,
9 that provides benefits, in whole or in part, through partici-
10 pating health care providers shall have (in relation to the
11 coverage) a sufficient number, distribution, and variety of
12 qualified participating health care providers to ensure that
13 all covered health care services, including specialty serv-
14 ices, will be available and accessible in a timely manner
15 to all participants, beneficiaries, and enrollees under the
16 plan or coverage. This subsection shall only apply to a
17 plan's or issuer's application of restrictions on the partici-
18 pation of health care providers in a network and shall not
19 be construed as requiring a plan or issuer to create or
20 establish new health care providers in an area.

21 (b) TREATMENT OF CERTAIN PROVIDERS.—The
22 qualified health care providers under subsection (a) may
23 include Federally qualified health centers, rural health
24 clinics, migrant health centers, and other essential com-
25 munity providers located in the service area of the plan

1 or issuer and shall include such providers if necessary to
 2 meet the standards established to carry out such sub-
 3 section.

4 **SEC. 109. NONDISCRIMINATION IN DELIVERY OF SERVICES.**

5 (a) APPLICATION TO DELIVERY OF SERVICES.—Sub-
 6 ject to subsection (b), a group health plan, and health in-
 7 surance issuer in relation to health insurance coverage,
 8 may not discriminate against a participant, beneficiary, or
 9 enrollee in the delivery of health care services consistent
 10 with the benefits covered under the plan or coverage or
 11 as required by law based on race, color, ethnicity, national
 12 origin, religion, sex, age, mental or physical disability, sex-
 13 ual orientation, genetic information, or source of payment.

14 (b) CONSTRUCTION.—Nothing in subsection (a) shall
 15 be construed as relating to the eligibility to be covered,
 16 or the offering (or guaranteeing the offer) of coverage,
 17 under a plan or health insurance coverage, the application
 18 of any pre-existing condition exclusion consistent with ap-
 19 plicable law, or premiums charged under such plan or cov-
 20 erage. Pursuant to section 192(b), except as provided in
 21 section 152, nothing in this title shall be construed as re-
 22 quiring a group health plan or health insurance issuer to
 23 provide specific benefits under the terms of such plan or
 24 coverage.

1 **Subtitle B—Quality Assurance**

2 **SEC. 111. INTERNAL QUALITY ASSURANCE PROGRAM.**

3 (a) REQUIREMENT.—A group health plan, and a
 4 health insurance issuer that offers health insurance cov-
 5 erage, shall establish and maintain an ongoing, internal
 6 quality assurance and continuous quality improvement
 7 program that meets the requirements of subsection (b).

8 (b) PROGRAM REQUIREMENTS.—The requirements of
 9 this subsection for a quality improvement program of a
 10 plan or issuer are as follows:

11 (1) ADMINISTRATION.—The plan or issuer has
 12 a separate identifiable unit with responsibility for
 13 administration of the program.

14 (2) WRITTEN PLAN.—The plan or issuer has a
 15 written plan for the program that is updated annu-
 16 ally and that specifies at least the following:

17 (A) The activities to be conducted.

18 (B) The organizational structure.

19 (C) The duties of the medical director.

20 (D) Criteria and procedures for the assess-
 21 ment of quality.

22 (3) SYSTEMATIC REVIEW.—The program pro-
 23 vides for systematic review of the type of health
 24 services provided, consistency of services provided
 25 with good medical practice, and patient outcomes.

1 (4) QUALITY CRITERIA.—The program—

2 (A) uses criteria that are based on per-
3 formance and patient outcomes where feasible
4 and appropriate;

5 (B) includes criteria that are directed spe-
6 cifically at meeting the needs of at-risk popu-
7 lations and covered individuals with chronic
8 conditions or severe illnesses, including gender-
9 specific criteria and pediatric-specific criteria
10 where available and appropriate;

11 (C) includes methods for informing covered
12 individuals of the benefit of preventive care and
13 what specific benefits with respect to preventive
14 care are covered under the plan or coverage;
15 and

16 (D) makes available to the public a de-
17 scription of the criteria used under subpara-
18 graph (A).

19 (5) SYSTEM FOR REPORTING.—The program
20 has procedures for reporting of possible quality con-
21 cerns by providers and enrollees and for remedial ac-
22 tions to correct quality problems, including written
23 procedures for responding to concerns and taking
24 appropriate corrective action.

1 (6) DATA ANALYSIS.—The program provides,
 2 using data that include the data collected under sec-
 3 tion 112, for an analysis of the plan’s or issuer’s
 4 performance on quality measures.

5 (7) DRUG UTILIZATION REVIEW.—The program
 6 provides for a drug utilization review program in ac-
 7 cordance with section 114.

8 (c) DEEMING.—For purposes of subsection (a), the
 9 requirements of—

10 (1) subsection (b) (other than paragraph (5))
 11 are deemed to be met with respect to a health insur-
 12 ance issuer that is a qualified health maintenance
 13 organization (as defined in section 1310(c) of the
 14 Public Health Service Act); or

15 (2) subsection (b) are deemed to be met with
 16 respect to a health insurance issuer that is accred-
 17 ited by a national accreditation organization that the
 18 Secretary certifies as applying, as a condition of cer-
 19 tification, standards at least as stringent as those
 20 required for a quality improvement program under
 21 subsection (b).

22 (d) VARIATION PERMITTED.—The Secretary may
 23 provide for variations in the application of the require-
 24 ments of this section to group health plans and health in-
 25 surance issuers based upon differences in the delivery sys-

1 tem among such plans and issuers as the Secretary deems
 2 appropriate.

3 **SEC. 112. COLLECTION OF STANDARDIZED DATA.**

4 (a) IN GENERAL.—A group health plan and a health
 5 insurance issuer that offers health insurance coverage
 6 shall collect uniform quality data that include a minimum
 7 uniform data set described in subsection (b).

8 (b) MINIMUM UNIFORM DATA SET.—The Secretary
 9 shall specify (and may from time to time update) the data
 10 required to be included in the minimum uniform data set
 11 under subsection (a) and the standard format for such
 12 data. Such data shall include at least—

13 (1) aggregate utilization data;

14 (2) data on the demographic characteristics of
 15 participants, beneficiaries, and enrollees;

16 (3) data on disease-specific and age-specific
 17 mortality rates and (to the extent feasible) morbidity
 18 rates of such individuals;

19 (4) data on satisfaction (including satisfaction
 20 with respect to services to children) of such individ-
 21 uals, including data on voluntary disenrollment and
 22 grievances; and

23 (5) data on quality indicators and health out-
 24 comes, including, to the extent feasible and appro-

1 piate, data on pediatric cases and on a gender-spe-
 2 cific basis.

3 (c) AVAILABILITY.—A summary of the data collected
 4 under subsection (a) shall be disclosed under section
 5 121(b)(9). The Secretary shall be provided access to all
 6 the data so collected.

7 (d) VARIATION PERMITTED.—The Secretary may
 8 provide for variations in the application of the require-
 9 ments of this section to group health plans and health in-
 10 surance issuers based upon differences in the delivery sys-
 11 tem among such plans and issuers as the Secretary deems
 12 appropriate.

13 (e) EXCEPTION FOR NON-MEDICAL, RELIGIOUS
 14 CARE PROVIDERS.—The requirements of subsection (a),
 15 insofar as they may apply to a provider of health care,
 16 do not apply to a provider that provides no medical care
 17 and that provides only a religious method of healing or
 18 religious nonmedical nursing care.

19 **SEC. 113. PROCESS FOR SELECTION OF PROVIDERS.**

20 (a) IN GENERAL.—A group health plan and a health
 21 insurance issuer that offers health insurance coverage
 22 shall, if it provides benefits through participating health
 23 care professionals, have a written process for the selection
 24 of participating health care professionals, including mini-
 25 mum professional requirements.

1 (b) VERIFICATION OF BACKGROUND.—Such process
 2 shall include verification of a health care provider’s license
 3 and a history of suspension or revocation.

4 (c) RESTRICTION.—Such process shall not use a
 5 high-risk patient base or location of a provider in an area
 6 with residents with poorer health status as a basis for ex-
 7 cluding providers from participation.

8 (d) NONDISCRIMINATION BASED ON LICENSURE.—

9 (1) IN GENERAL.—Such process shall not dis-
 10 criminate with respect to participation or indem-
 11 nification as to any provider who is acting within the
 12 scope of the provider’s license or certification under
 13 applicable State law, solely on the basis of such li-
 14 cense or certification.

15 (2) CONSTRUCTION.—Paragraph (1) shall not
 16 be construed—

17 (A) as requiring the coverage under a plan
 18 or coverage of particular benefits or services or
 19 to prohibit a plan or issuer from including pro-
 20 viders only to the extent necessary to meet the
 21 needs of the plan’s or issuer’s participants,
 22 beneficiaries, or enrollees or from establishing
 23 any measure designed to maintain quality and
 24 control costs consistent with the responsibilities
 25 of the plan or issuer; or

1 (B) to override any State licensure or
 2 scope-of-practice law.

3 (e) GENERAL NONDISCRIMINATION.—

4 (1) IN GENERAL.—Subject to paragraph (2),
 5 such process shall not discriminate with respect to
 6 selection of a health care professional to be a partici-
 7 pating health care provider, or with respect to the
 8 terms and conditions of such participation, based on
 9 the professional's race, color, religion, sex, national
 10 origin, age, sexual orientation, or disability (consist-
 11 ent with the Americans with Disabilities Act of
 12 1990).

13 (2) RULES.—The appropriate Secretary may
 14 establish such definitions, rules, and exceptions as
 15 may be appropriate to carry out paragraph (1), tak-
 16 ing into account comparable definitions, rules, and
 17 exceptions in effect under employment-based non-
 18 discrimination laws and regulations that relate to
 19 each of the particular bases for discrimination de-
 20 scribed in such paragraph.

21 **SEC. 114. DRUG UTILIZATION PROGRAM.**

22 A group health plan, and a health insurance issuer
 23 that provides health insurance coverage, that includes ben-
 24 efits for prescription drugs shall establish and maintain,
 25 as part of its internal quality assurance and continuous

1 quality improvement program under section 111, a drug
 2 utilization program which—

3 (1) encourages appropriate use of prescription
 4 drugs by participants, beneficiaries, and enrollees
 5 and providers, and

6 (2) takes appropriate action to reduce the inci-
 7 dence of improper drug use and adverse drug reac-
 8 tions and interactions.

9 **SEC. 115. STANDARDS FOR UTILIZATION REVIEW ACTIVI-**
 10 **TIES.**

11 (a) COMPLIANCE WITH REQUIREMENTS.—

12 (1) IN GENERAL.—A group health plan, and a
 13 health insurance issuer that provides health insur-
 14 ance coverage, shall conduct utilization review activi-
 15 ties in connection with the provision of benefits
 16 under such plan or coverage only in accordance with
 17 a utilization review program that meets the require-
 18 ments of this section.

19 (2) USE OF OUTSIDE AGENTS.—Nothing in this
 20 section shall be construed as preventing a group
 21 health plan or health insurance issuer from arrang-
 22 ing through a contract or otherwise for persons or
 23 entities to conduct utilization review activities on be-
 24 half of the plan or issuer, so long as such activities

1 are conducted in accordance with a utilization review
 2 program that meets the requirements of this section.

3 (3) UTILIZATION REVIEW DEFINED.—For pur-
 4 poses of this section, the terms “utilization review”
 5 and “utilization review activities” mean procedures
 6 used to monitor or evaluate the clinical necessity,
 7 appropriateness, efficacy, or efficiency of health care
 8 services, procedures or settings, and includes pro-
 9 spective review, concurrent review, second opinions,
 10 case management, discharge planning, or retrospec-
 11 tive review.

12 (b) WRITTEN POLICIES AND CRITERIA.—

13 (1) WRITTEN POLICIES.—A utilization review
 14 program shall be conducted consistent with written
 15 policies and procedures that govern all aspects of the
 16 program.

17 (2) USE OF WRITTEN CRITERIA.—

18 (A) IN GENERAL.—Such a program shall
 19 utilize written clinical review criteria developed
 20 pursuant to the program with the input of ap-
 21 propriate physicians. Such criteria shall include
 22 written clinical review criteria described in sec-
 23 tion 111(b)(4)(B).

24 (B) CONTINUING USE OF STANDARDS IN
 25 RETROSPECTIVE REVIEW.—If a health care

1 service has been specifically pre-authorized or
2 approved for an enrollee under such a program,
3 the program shall not, pursuant to retrospective
4 review, revise or modify the specific standards,
5 criteria, or procedures used for the utilization
6 review for procedures, treatment, and services
7 delivered to the enrollee during the same course
8 of treatment.

9 (c) CONDUCT OF PROGRAM ACTIVITIES.—

10 (1) ADMINISTRATION BY HEALTH CARE PRO-
11 FESSIONALS.—A utilization review program shall be
12 administered by qualified health care professionals
13 who shall oversee review decisions. In this sub-
14 section, the term “health care professional” means a
15 physician or other health care practitioner licensed,
16 accredited, or certified to perform specified health
17 services consistent with State law.

18 (2) USE OF QUALIFIED, INDEPENDENT PER-
19 SONNEL.—

20 (A) IN GENERAL.—A utilization review
21 program shall provide for the conduct of utiliza-
22 tion review activities only through personnel
23 who are qualified and, to the extent required,
24 who have received appropriate training in the
25 conduct of such activities under the program.

1 (B) PEER REVIEW OF SAMPLE OF AD-
2 VERSE CLINICAL DETERMINATIONS.—Such a
3 program shall provide that clinical peers (as de-
4 fined in section 191(c)(2)) shall evaluate the
5 clinical appropriateness of at least a sample of
6 adverse clinical determinations.

7 (C) PROHIBITION OF CONTINGENT COM-
8 PENSATION ARRANGEMENTS.—Such a program
9 shall not, with respect to utilization review ac-
10 tivities, permit or provide compensation or any-
11 thing of value to its employees, agents, or con-
12 tractors in a manner that—

13 (i) provides incentives, direct or indi-
14 rect, for such persons to make inappropri-
15 ate review decisions, or

16 (ii) is based, directly or indirectly, on
17 the quantity or type of adverse determina-
18 tions rendered.

19 (D) PROHIBITION OF CONFLICTS.—Such a
20 program shall not permit a health care profes-
21 sional who provides health care services to an
22 individual to perform utilization review activi-
23 ties in connection with the health care services
24 being provided to the individual.

1 (3) ACCESSIBILITY OF REVIEW.—Such a pro-
2 gram shall provide that appropriate personnel per-
3 forming utilization review activities under the pro-
4 gram are reasonably accessible by toll-free telephone
5 during normal business hours to discuss patient care
6 and allow response to telephone requests, and that
7 appropriate provision is made to receive and respond
8 promptly to calls received during other hours.

9 (4) LIMITS ON FREQUENCY.—Such a program
10 shall not provide for the performance of utilization
11 review activities with respect to a class of services
12 furnished to an individual more frequently than is
13 reasonably required to assess whether the services
14 under review are medically necessary or appropriate.

15 (5) LIMITATION ON INFORMATION REQUESTS.—
16 Under such a program, information shall be required
17 to be provided by health care providers only to the
18 extent it is necessary to perform the utilization re-
19 view activity involved.

20 (d) DEADLINE FOR DETERMINATIONS.—

21 (1) PRIOR AUTHORIZATION SERVICES.—Except
22 as provided in paragraph (2), in the case of a utili-
23 zation review activity involving the prior authoriza-
24 tion of health care items and services for an individ-
25 ual, the utilization review program shall make a de-

1 termination concerning such authorization, and pro-
2 vide notice of the determination to the individual or
3 the individual's designee and the individual's health
4 care provider by telephone and in printed form, as
5 soon as possible in accordance with the medical ex-
6 igencies of the cases, and in no event later than 3
7 business days after the date of receipt of information
8 that is reasonably necessary to make such deter-
9 mination.

10 (2) CONTINUED CARE.—In the case of a utiliza-
11 tion review activity involving authorization for con-
12 tinued or extended health care services for an indi-
13 vidual, or additional services for an individual under-
14 going a course of continued treatment prescribed by
15 a health care provider, the utilization review pro-
16 gram shall make a determination concerning such
17 authorization, and provide notice of the determina-
18 tion to the individual or the individual's designee
19 and the individual's health care provider by tele-
20 phone and in printed form, as soon as possible in ac-
21 cordance with the medical exigencies of the cases,
22 and in no event later than 1 business day after the
23 date of receipt of information that is reasonably nec-
24 essary to make such determination. Such notice shall
25 include, with respect to continued or extended health

1 care services, the number of extended services ap-
 2 proved, the new total of approved services, the date
 3 of onset of services, and the next review date, if any.

4 (3) PREVIOUSLY PROVIDED SERVICES.—In the
 5 case of a utilization review activity involving retro-
 6 spective review of health care services previously pro-
 7 vided for an individual, the utilization review pro-
 8 gram shall make a determination concerning such
 9 services, and provide notice of the determination to
 10 the individual or the individual's designee and the
 11 individual's health care provider by telephone and in
 12 printed form, within 30 days of the date of receipt
 13 of information that is reasonably necessary to make
 14 such determination.

15 (4) REFERENCE TO SPECIAL RULES FOR EMER-
 16 GENCY SERVICES, MAINTENANCE CARE, AND POST-
 17 STABILIZATION CARE.—For waiver of prior author-
 18 ization requirements in certain cases involving emer-
 19 gency services and maintenance care and post-sta-
 20 bilization care, see subsections (a)(1) and (b) of sec-
 21 tion 101, respectively.

22 (e) NOTICE OF ADVERSE DETERMINATIONS.—

23 (1) IN GENERAL.—Notice of an adverse deter-
 24 mination under a utilization review program shall be
 25 provided in printed form and shall include—

1 (A) the reasons for the determination (in-
2 cluding the clinical rationale);

3 (B) instructions on how to initiate an ap-
4 peal under section 132; and

5 (C) notice of the availability, upon request
6 of the individual (or the individual's designee)
7 of the clinical review criteria relied upon to
8 make such determination.

9 (2) SPECIFICATION OF ANY ADDITIONAL INFOR-
10 MATION.—Such a notice shall also specify what (if
11 any) additional necessary information must be pro-
12 vided to, or obtained by, the person making the de-
13 termination in order to make a decision on such an
14 appeal.

15 **SEC. 116. HEALTH CARE QUALITY ADVISORY BOARD.**

16 (a) ESTABLISHMENT.—The President shall establish
17 an advisory board to provide information to Congress and
18 the administration on issues relating to quality monitoring
19 and improvement in the health care provided under group
20 health plans and health insurance coverage.

21 (b) NUMBER AND APPOINTMENT.—The advisory
22 board shall be composed of the Secretary of Health and
23 Human Services (or the Secretary's designee), the Sec-
24 retary of Labor (or the Secretary's designee), and 20 addi-
25 tional members appointed by the President, in consulta-

tion with the Majority and Minority Leaders of the Senate
and House of Representatives. The members so appointed
shall include individuals with expertise in—

- (1) consumer needs;
- (2) education and training of health professionals;
- (3) health care services;
- (4) health plan management;
- (5) health care accreditation, quality assurance, improvement, measurement, and oversight;
- (6) medical practice, including practicing physicians;
- (7) prevention and public health; and
- (8) public and private group purchasing for small and large employers or groups.

(c) DUTIES.—The advisory board shall—

- (1) identify, update, and disseminate measures of health care quality for group health plans and health insurance issuers, including network and non-network plans;
- (2) advise the Secretary on the development and maintenance of the minimum data set in section 112(b); and

1 (3) advise the Secretary on standardized for-
2 mats for information on group health plans and
3 health insurance coverage.

4 The measures identified under paragraph (1) may be used
5 on a voluntary basis by such plans and issuers. In carrying
6 out paragraph (1), the advisory board shall consult and
7 cooperate with national health care standard setting bod-
8 ies which define quality indicators, the Agency for Health
9 Care Policy and Research, the Institute of Medicine, and
10 other public and private entities that have expertise in
11 health care quality.

12 (d) REPORT.—The advisory board shall provide an
13 annual report to Congress and the President on the qual-
14 ity of the health care in the United States and national
15 and regional trends in health care quality. Such report
16 shall include a description of determinants of health care
17 quality and measurements of practice and quality varia-
18 bility within the United States.

19 (e) SECRETARIAL CONSULTATION.—In serving on
20 the advisory board, the Secretaries of Health and Human
21 Services and Labor (or their designees) shall consult with
22 the Secretaries responsible for other Federal health insur-
23 ance and health care programs.

24 (f) VACANCIES.—Any vacancy on the board shall be
25 filled in such manner as the original appointment. Mem-

bers of the board shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties. Administrative support, scientific support, and technical assistance for the advisory board shall be provided by the Secretary of Health and Human Services.

(g) CONTINUATION.—Section 14(a)(2)(B) of the Federal Advisory Committee Act (5 U.S.C. App.; relating to the termination of advisory committees) shall not apply to the advisory board.

Subtitle C—Patient Information

SEC. 121. PATIENT INFORMATION.

(a) DISCLOSURE REQUIREMENT.—

(1) GROUP HEALTH PLANS.—A group health plan shall—

(A) provide to participants and beneficiaries at the time of initial coverage under the plan (or the effective date of this section, in the case of individuals who are participants or beneficiaries as of such date), and at least annually thereafter, the information described in subsection (b) in printed form;

(B) provide to participants and beneficiaries, within a reasonable period (as specified by the appropriate Secretary) before or

1 after the date of significant changes in the in-
 2 formation described in subsection (b), informa-
 3 tion in printed form on such significant
 4 changes; and

5 (C) upon request, make available to par-
 6 ticipants and beneficiaries, the applicable au-
 7 thority, and prospective participants and bene-
 8 ficiaries, the information described in sub-
 9 section (b) or (c) in printed form.

10 (2) HEALTH INSURANCE ISSUERS.—A health
 11 insurance issuer in connection with the provision of
 12 health insurance coverage shall—

13 (A) provide to individuals enrolled under
 14 such coverage at the time of enrollment, and at
 15 least annually thereafter, the information de-
 16 scribed in subsection (b) in printed form;

17 (B) provide to enrollees, within a reason-
 18 able period (as specified by the appropriate Sec-
 19 retary) before or after the date of significant
 20 changes in the information described in sub-
 21 section (b), information in printed form on such
 22 significant changes; and

23 (C) upon request, make available to the
 24 applicable authority, to individuals who are pro-
 25 spective enrollees, and to the public the infor-

1 mation described in subsection (b) or (c) in
2 printed form.

3 (b) INFORMATION PROVIDED.—The information de-
4 scribed in this subsection with respect to a group health
5 plan or health insurance coverage offered by a health in-
6 surance issuer includes the following:

7 (1) SERVICE AREA.—The service area of the
8 plan or issuer.

9 (2) BENEFITS.—Benefits offered under the
10 plan or coverage, including—

11 (A) covered benefits, including benefit lim-
12 its and coverage exclusions;

13 (B) cost sharing, such as deductibles, coin-
14 surance, and copayment amounts, including any
15 liability for balance billing, any maximum limi-
16 tations on out of pocket expenses, and the max-
17 imum out of pocket costs for services that are
18 provided by non participating providers or that
19 are furnished without meeting the applicable
20 utilization review requirements;

21 (C) the extent to which benefits may be ob-
22 tained from nonparticipating providers;

23 (D) the extent to which a participant, ben-
24 eficiary, or enrollee may select from among par-

1 ticipating providers and the types of providers
2 participating in the plan or issuer network;

3 (E) process for determining experimental
4 coverage; and

5 (F) use of a prescription drug formulary.

6 (3) ACCESS.—A description of the following:

7 (A) The number, mix, and distribution of
8 providers under the plan or coverage.

9 (B) Out-of-network coverage (if any) pro-
10 vided by the plan or coverage.

11 (C) Any point-of-service option (including
12 any supplemental premium or cost-sharing for
13 such option).

14 (D) The procedures for participants, bene-
15 ficiaries, and enrollees to select, access, and
16 change participating primary and specialty pro-
17 viders.

18 (E) The rights and procedures for obtain-
19 ing referrals (including standing referrals) to
20 participating and nonparticipating providers.

21 (F) The name, address, and telephone
22 number of participating health care providers
23 and an indication of whether each such provider
24 is available to accept new patients.

1 (G) Any limitations imposed on the selec-
 2 tion of qualifying participating health care pro-
 3 viders, including any limitations imposed under
 4 section 103(b)(2).

5 (H) How the plan or issuer addresses the
 6 needs of participants, beneficiaries, and enroll-
 7 ees and others who do not speak English or
 8 who have other special communications needs in
 9 accessing providers under the plan or coverage,
 10 including the provision of information described
 11 in this subsection and subsection (c) to such in-
 12 dividuals and including the provision of infor-
 13 mation in a language other than English if 5
 14 percent of the number of participants, bene-
 15 ficiaries, and enrollees communicate in that lan-
 16 guage instead of English.

17 (4) OUT-OF-AREA COVERAGE.—Out-of-area cov-
 18 erage provided by the plan or issuer.

19 (5) EMERGENCY COVERAGE.—Coverage of
 20 emergency services, including—

21 (A) the appropriate use of emergency serv-
 22 ices, including use of the 911 telephone system
 23 or its local equivalent in emergency situations
 24 and an explanation of what constitutes an
 25 emergency situation;

1 (B) the process and procedures of the plan
 2 or issuer for obtaining emergency services; and

3 (C) the locations of (i) emergency depart-
 4 ments, and (ii) other settings, in which plan
 5 physicians and hospitals provide emergency
 6 services and post-stabilization care.

7 (6) PERCENTAGE OF PREMIUMS USED FOR
 8 BENEFITS (LOSS-RATIOS).—In the case of health in-
 9 surance coverage only (and not with respect to group
 10 health plans that do not provide coverage through
 11 health insurance coverage), a description of the over-
 12 all loss-ratio for the coverage (as defined in accord-
 13 ance with rules established or recognized by the Sec-
 14 retary of Health and Human Services).

15 (7) PRIOR AUTHORIZATION RULES.—Rules re-
 16 garding prior authorization or other review require-
 17 ments that could result in noncoverage or non-
 18 payment.

19 (8) GRIEVANCE AND APPEALS PROCEDURES.—
 20 All appeal or grievance rights and procedures under
 21 the plan or coverage, including the method for filing
 22 grievances and the time frames and circumstances
 23 for acting on grievances and appeals, who is the ap-
 24 plicable authority with respect to the plan or issuer,
 25 and the availability of assistance through an om-

1 budsman to individuals in relation to group health
2 plans and health insurance coverage.

3 (9) QUALITY ASSURANCE.—A summary descrip-
4 tion of the data on quality collected under section
5 112(a), including a summary description of the data
6 on satisfaction of participants, beneficiaries, and en-
7 rollees (including data on individual voluntary
8 disenrollment and grievances and appeals) described
9 in section 112(b)(4).

10 (10) SUMMARY OF PROVIDER FINANCIAL IN-
11 CENTIVES.—A summary description of the informa-
12 tion on the types of financial payment incentives
13 (described in section 1852(j)(4) of the Social Secu-
14 rity Act) provided by the plan or issuer under the
15 coverage.

16 (11) INFORMATION ON ISSUER.—Notice of ap-
17 propriate mailing addresses and telephone numbers
18 to be used by participants, beneficiaries, and enroll-
19 ees in seeking information or authorization for treat-
20 ment.

21 (12) AVAILABILITY OF INFORMATION ON RE-
22 QUEST.—Notice that the information described in
23 subsection (c) is available upon request.

1 (c) INFORMATION MADE AVAILABLE UPON RE-
2 QUEST.—The information described in this subsection is
3 the following:

4 (1) UTILIZATION REVIEW ACTIVITIES.—A de-
5 scription of procedures used and requirements (in-
6 cluding circumstances, time frames, and appeal
7 rights) under any utilization review program under
8 section 115, including under any drug formulary
9 program under section 107.

10 (2) GRIEVANCE AND APPEALS INFORMATION.—
11 Information on the number of grievances and ap-
12 peals and on the disposition in the aggregate of such
13 matters.

14 (3) METHOD OF PHYSICIAN COMPENSATION.—
15 An overall summary description as to the method of
16 compensation of participating physicians, including
17 information on the types of financial payment incen-
18 tives (described in section 1852(j)(4) of the Social
19 Security Act) provided by the plan or issuer under
20 the coverage.

21 (4) SPECIFIC INFORMATION ON CREDENTIALS
22 OF PARTICIPATING PROVIDERS.—In the case of each
23 participating provider, a description of the creden-
24 tials of the provider.

1 (5) CONFIDENTIALITY POLICIES AND PROCE-
 2 DURES.—A description of the policies and proce-
 3 dures established to carry out section 122.

4 (6) FORMULARY RESTRICTIONS.—A description
 5 of the nature of any drug formula restrictions.

6 (7) PARTICIPATING PROVIDER LIST.—A list of
 7 current participating health care providers.

8 (d) FORM OF DISCLOSURE.—

9 (1) UNIFORMITY.—Information required to be
 10 disclosed under this section shall be provided in ac-
 11 cordance with uniform, national reporting standards
 12 specified by the Secretary, after consultation with
 13 applicable State authorities, so that prospective en-
 14 rollees may compare the attributes of different
 15 issuers and coverage offered within an area.

16 (2) INFORMATION INTO HANDBOOK.—Nothing
 17 in this section shall be construed as preventing a
 18 group health plan or health insurance issuer from
 19 making the information under subsections (b) and
 20 (c) available to participants, beneficiaries, and en-
 21 rollees through an enrollee handbook or similar pub-
 22 lication.

23 (3) UPDATING PARTICIPATING PROVIDER IN-
 24 FORMATION.—The information on participating
 25 health care providers described in subsection

1 (b)(3)(C) shall be updated within such reasonable
 2 period as determined appropriate by the Secretary.
 3 Nothing in this section shall prevent an issuer from
 4 changing or updating other information made avail-
 5 able under this section.

6 (e) CONSTRUCTION.—Nothing in this section shall be
 7 construed as requiring public disclosure of individual con-
 8 tracts or financial arrangements between a group health
 9 plan or health insurance issuer and any provider.

10 **SEC. 122. PROTECTION OF PATIENT CONFIDENTIALITY.**

11 Insofar as a group health plan, or a health insurance
 12 issuer that offers health insurance coverage, maintains
 13 medical records or other health information regarding par-
 14 ticipants, beneficiaries, and enrollees, the plan or issuer
 15 shall establish procedures—

16 (1) to safeguard the privacy of any individually
 17 identifiable enrollee information;

18 (2) to maintain such records and information in
 19 a manner that is accurate and timely, and

20 (3) to assure timely access of such individuals
 21 to such records and information.

22 **SEC. 123. HEALTH INSURANCE OMBUDSMEN.**

23 (a) IN GENERAL.—Each State that obtains a grant
 24 under subsection (c) shall provide for creation and oper-
 25 ation of a Health Insurance Ombudsman through a con-

1 tract with a not-for-profit organization that operates inde-
2 pendent of group health plans and health insurance
3 issuers. Such Ombudsman shall be responsible for at least
4 the following:

5 (1) To assist consumers in the State in choos-
6 ing among health insurance coverage or among cov-
7 erage options offered within group health plans.

8 (2) To provide counseling and assistance to en-
9 rollees dissatisfied with their treatment by health in-
10 surance issuers and group health plans in regard to
11 such coverage or plans and with respect to griev-
12 ances and appeals regarding determinations under
13 such coverage or plans.

14 (b) FEDERAL ROLE.—In the case of any State that
15 does not provide for such an Ombudsman under sub-
16 section (a), the Secretary shall provide for the creation
17 and operation of a Health Insurance Ombudsman through
18 a contract with a not-for-profit organization that operates
19 independent of group health plans and health insurance
20 issuers and that is responsible for carrying out with re-
21 spect to that State the functions otherwise provided under
22 subsection (a) by a Health Insurance Ombudsman.

23 (c) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Secretary of
25 Health and Human Services such amounts as may be nec-

1 essary to provide for grants to States for contracts for
 2 Health Insurance Ombudsmen under subsection (a) or
 3 contracts for such Ombudsmen under subsection (b).

4 (d) CONSTRUCTION.—Nothing in this section shall be
 5 construed to prevent the use of other forms of enrollee
 6 assistance.

7 **Subtitle D—Grievance and Appeals** 8 **Procedures**

9 **SEC. 131. ESTABLISHMENT OF GRIEVANCE PROCESS.**

10 (a) ESTABLISHMENT OF GRIEVANCE SYSTEM.—

11 (1) IN GENERAL.—A group health plan, and a
 12 health insurance issuer in connection with the provi-
 13 sion of health insurance coverage, shall establish and
 14 maintain a system to provide for the presentation
 15 and resolution of oral and written grievances
 16 brought by individuals who are participants, bene-
 17 ficiaries, or enrollees, or health care providers or
 18 other individuals acting on behalf of an individual
 19 and with the individual's consent, regarding any as-
 20 pect of the plan's or issuer's services.

21 (2) SCOPE.—The system shall include griev-
 22 ances regarding access to and availability of services,
 23 quality of care, choice and accessibility of providers,
 24 network adequacy, and compliance with the require-
 25 ments of this title.

1 (b) GRIEVANCE SYSTEM.—Such system shall include
 2 the following components with respect to individuals who
 3 are participants, beneficiaries, or enrollees:

4 (1) Written notification to all such individuals
 5 and providers of the telephone numbers and business
 6 addresses of the plan or issuer personnel responsible
 7 for resolution of grievances and appeals.

8 (2) A system to record and document, over a
 9 period of at least 3 previous years, all grievances
 10 and appeals made and their status.

11 (3) A process providing for timely processing
 12 and resolution of grievances.

13 (4) Procedures for follow-up action, including
 14 the methods to inform the person making the grievance
 15 of the resolution of the grievance.

16 (5) Notification to the continuous quality improvement
 17 program under section 111(a) of all
 18 grievances and appeals relating to quality of care.

19 **SEC. 132. INTERNAL APPEALS OF ADVERSE DETERMINA-**
 20 **TIONS.**

21 (a) RIGHT OF APPEAL.—

22 (1) IN GENERAL.—A participant or beneficiary
 23 in a group health plan, and an enrollee in health insurance
 24 coverage offered by a health insurance
 25 issuer, and any provider or other person acting on

1 behalf of such an individual with the individual's
 2 consent, may appeal any appealable decision (as de-
 3 fined in paragraph (2)) under the procedures de-
 4 scribed in this section and (to the extent applicable)
 5 section 133. Such individuals and providers shall be
 6 provided with a written explanation of the appeal
 7 process and the determination upon the conclusion
 8 of the appeals process and as provided in section
 9 121(b)(8).

10 (2) APPEALABLE DECISION DEFINED.—In this
 11 section, the term “appealable decision” means any of
 12 the following:

13 (A) Denial, reduction, or termination of, or
 14 failure to provide or make payment (in whole or
 15 in part) for a benefit, including a failure to
 16 cover an item or service for which benefits are
 17 otherwise provided because it is determined to
 18 be experimental or investigational or not medi-
 19 cally necessary or appropriate.

20 (B) Failure to provide coverage of emer-
 21 gency services or reimbursement of mainte-
 22 nance care or post-stabilization care under sec-
 23 tion 101.

24 (C) Failure to provide a choice of provider
 25 under section 103.

1 (D) Failure to provide qualified health care
2 providers under section 103.

3 (E) Failure to provide access to specialty
4 and other care under section 104.

5 (F) Failure to provide continuation of care
6 under section 105.

7 (G) Failure to provide coverage of routine
8 patient costs in connection with an approval
9 clinical trial under section 106.

10 (H) Failure to provide access to needed
11 drugs under section 107(a)(3) or 107(b).

12 (I) Discrimination in delivery of services in
13 violation of section 109.

14 (J) An adverse determination under a utili-
15 zation review program under section 115.

16 (K) The imposition of a limitation that is
17 prohibited under section 151.

18 (b) INTERNAL APPEAL PROCESS.—

19 (1) IN GENERAL.—Each group health plan and
20 health insurance issuer shall establish and maintain
21 an internal appeal process under which any partici-
22 pant, beneficiary, or enrollee, or any provider or
23 other person acting on behalf of such an individual
24 with the individual's consent, who is dissatisfied with
25 any appealable decision has the opportunity to ap-

1 peal the decision through an internal appeal process.
2 The appeal may be communicated orally.

3 (2) CONDUCT OF REVIEW.—

4 (A) IN GENERAL.—The process shall in-
5 clude a review of the decision by a physician or
6 other health care professional (or professionals)
7 who has been selected by the plan or issuer and
8 who has not been involved in the appealable de-
9 cision at issue in the appeal.

10 (B) AVAILABILITY AND PARTICIPATION OF
11 CLINICAL PEERS.—The individuals conducting
12 such review shall include one or more clinical
13 peers (as defined in section 191(c)(2)) who have
14 not been involved in the appealable decision at
15 issue in the appeal.

16 (3) DEADLINE.—

17 (A) IN GENERAL.—Subject to subsection
18 (c), the plan or issuer shall conclude each ap-
19 peal as soon as possible after the time of the re-
20 ceipt of the appeal in accordance with medical
21 exigencies of the case involved, but in no event
22 later than—

23 (i) 72 hours after the time of receipt
24 of an expedited appeal, and

1 (ii) except as provided in subpara-
2 graph (B), 30 business days after such
3 time (or, if the participant, beneficiary, or
4 enrollee supplies additional information
5 that was not available to the plan or issuer
6 at the time of the receipt of the appeal,
7 after the date of supplying such additional
8 information) in the case of all other ap-
9 peals.

10 (B) EXTENSION.—In the case of an appeal
11 that does not relate to a decision regarding an
12 expedited appeal and that does not involve med-
13 ical exigencies, if a group health plan or health
14 insurance issuer is unable to conclude the ap-
15 peal within the time period provided under sub-
16 paragraph (A)(ii) due to circumstances beyond
17 the control of the plan or issuer, the deadline
18 shall be extended for up to an additional 10
19 business days if the plan or issuer provides, on
20 or before 10 days before the deadline otherwise
21 applicable, written notice to the participant,
22 beneficiary, or enrollee and the provider in-
23 volved of the extension and the reasons for the
24 extension.

1 (4) NOTICE.—If a plan or issuer denies an ap-
2 peal, the plan or issuer shall provide the participant,
3 beneficiary, or enrollee and provider involved with
4 notice in printed form of the denial and the reasons
5 therefore, together with a notice in printed form of
6 rights to any further appeal.

7 (c) EXPEDITED REVIEW PROCESS.—

8 (1) IN GENERAL.—A group health plan, and a
9 health insurance issuer, shall establish procedures in
10 writing for the expedited consideration of appeals
11 under subsection (b) in situations in which the appli-
12 cation of the normal timeframe for making a deter-
13 mination could seriously jeopardize the life or health
14 of the participant, beneficiary, or enrollee (including
15 in the case of a child, development) or such an indi-
16 vidual's ability to regain maximum function.

17 (2) PROCESS.—Under such procedures—

18 (A) the request for expedited appeal may
19 be submitted orally or in writing by an individ-
20 ual or provider who is otherwise entitled to re-
21 quest the appeal;

22 (B) all necessary information, including
23 the plan's or issuer's decision, shall be trans-
24 mitted between the plan or issuer and the re-

1 quester by telephone, facsimile, or other simi-
 2 larly expeditious available method; and

3 (C) the plan or issuer shall expedite the
 4 appeal if the request for an expedited appeal is
 5 submitted under subparagraph (A) by a physi-
 6 cian and the request indicates that the situation
 7 described in paragraph (1) exists.

8 (d) **DIRECT USE OF FURTHER APPEALS.**—In the
 9 event that the plan or issuer fails to comply with any of
 10 the deadlines for completion of appeals under this section
 11 or in the event that the plan or issuer for any reason ex-
 12 pressly waives its rights to an internal review of an appeal
 13 under subsection (b), the participant, beneficiary, or en-
 14 rollee involved and the provider involved shall be relieved
 15 of any obligation to complete the appeal involved and may,
 16 at such an individual's or provider's option, proceed di-
 17 rectly to seek further appeal through any applicable exter-
 18 nal appeals process.

19 **SEC. 133. EXTERNAL APPEALS OF ADVERSE DETERMINA-**
 20 **TIONS.**

21 (a) **RIGHT TO EXTERNAL APPEAL.**—

22 (1) **IN GENERAL.**—A group health plan, and a
 23 health insurance issuer offering group health insur-
 24 ance coverage, shall provide for an external appeals
 25 process that meets the requirements of this section

1 in the case of an externally appealable decision de-
 2 scribed in paragraph (2). The appropriate Secretary
 3 shall establish standards to carry out such require-
 4 ments.

5 (2) EXTERNALLY APPEALABLE DECISION DE-
 6 FINED.—For purposes of this section, the term “ex-
 7 ternally appealable decision” means an appealable
 8 decision (as defined in section 132(a)(2)) if—

9 (A) the amount involved exceeds a signifi-
 10 cant threshold; or

11 (B) the patient’s life or health is jeopard-
 12 ized (including, in the case of a child, develop-
 13 ment) as a consequence of the decision.

14 Such term does not include a denial of coverage for
 15 services that are specifically listed in plan or cov-
 16 erage documents as excluded from coverage.

17 (3) EXHAUSTION OF INTERNAL APPEALS PROC-
 18 ESS.—A plan or issuer may condition the use of an
 19 external appeal process in the case of an externally
 20 appealable decision upon completion of the internal
 21 review process provided under section 132, but only
 22 if the decision is made in a timely basis consistent
 23 with the deadlines provided under this subtitle.

24 (b) GENERAL ELEMENTS OF EXTERNAL APPEALS
 25 PROCESS.—

1 (1) CONTRACT WITH QUALIFIED EXTERNAL AP-
2 PEAL ENTITY.—

3 (A) CONTRACT REQUIREMENT.—Subject to
4 subparagraph (B), the external appeal process
5 under this section of a plan or issuer shall be
6 conducted under a contract between the plan or
7 issuer and one or more qualified external appeal
8 entities (as defined in subsection (c)).

9 (B) RESTRICTIONS ON QUALIFIED EXTER-
10 NAL APPEAL ENTITY.—

11 (i) BY STATE FOR HEALTH INSUR-
12 ANCE ISSUERS.—With respect to health in-
13 surance issuers in a State, the State may
14 provide for external review activities to be
15 conducted by a qualified external appeal
16 entity that is designated by the State or
17 that is selected by the State in such a
18 manner as to assure an unbiased deter-
19 mination.

20 (ii) BY FEDERAL GOVERNMENT FOR
21 GROUP HEALTH PLANS.—With respect to
22 group health plans, the appropriate Sec-
23 retary may exercise the same authority as
24 a State may exercise with respect to health
25 insurance issuers under clause (i). Such

1 authority may include requiring the use of
 2 the qualified external appeal entity des-
 3 ignated or selected under such clause.

4 (iii) LIMITATION ON PLAN OR ISSUER
 5 SELECTION.—If an applicable authority
 6 permits more than one entity to qualify as
 7 a qualified external appeal entity with re-
 8 spect to a group health plan or health in-
 9 surance issuer and the plan or issuer may
 10 select among such qualified entities, the
 11 applicable authority—

12 (I) shall assure that the selection
 13 process will not create any incentives
 14 for external appeal entities to make a
 15 decision in a biased manner, and

16 (II) shall implement procedures
 17 for auditing a sample of decisions by
 18 such entities to assure that no such
 19 decisions are made in a biased man-
 20 ner.

21 (C) OTHER TERMS AND CONDITIONS.—

22 The terms and conditions of a contract under
 23 this paragraph shall be consistent with the
 24 standards the appropriate Secretary shall estab-
 25 lish to assure there is no real or apparent con-

1 flict of interest in the conduct of external ap-
 2 peal activities. Such contract shall provide that
 3 the direct costs of the process (not including
 4 costs of representation of a participant, bene-
 5 ficiary, or enrollee) shall be paid by the plan or
 6 issuer, and not by the participant, beneficiary,
 7 or enrollee.

8 (2) ELEMENTS OF PROCESS.—An external ap-
 9 peal process shall be conducted consistent with
 10 standards established by the appropriate Secretary
 11 that include at least the following:

12 (A) FAIR PROCESS; DE NOVO DETERMINA-
 13 TION.—The process shall provide for a fair, de
 14 novo determination.

15 (B) DETERMINATION CONCERNING EXTER-
 16 NALLY APPEALABLE DECISIONS.—A qualified
 17 external appeal entity shall determine whether a
 18 decision is an externally appealable decision and
 19 related decisions, including—

20 (i) whether such a decision involves an
 21 expedited appeal;

22 (ii) the appropriate deadlines for in-
 23 ternal review process required due to medi-
 24 cal exigencies in a case; and

1 (iii) whether such a process has been
2 completed.

3 (C) OPPORTUNITY TO SUBMIT EVIDENCE,
4 HAVE REPRESENTATION, AND MAKE ORAL
5 PRESENTATION.—Each party to an externally
6 appealable decision—

7 (i) may submit and review evidence
8 related to the issues in dispute,

9 (ii) may use the assistance or rep-
10 resentation of one or more individuals (any
11 of whom may be an attorney), and

12 (iii) may make an oral presentation.

13 (D) PROVISION OF INFORMATION.—The
14 plan or issuer involved shall provide timely ac-
15 cess to all its records relating to the matter of
16 the externally appealable decision and to all
17 provisions of the plan or health insurance cov-
18 erage (including any coverage manual) relating
19 to the matter.

20 (E) TIMELY DECISIONS.—A determination
21 by the external appeal entity on the decision
22 shall—

23 (i) be made orally or in writing and,
24 if it is made orally, shall be supplied to the
25 parties in writing as soon as possible;

- 1 (ii) be binding on the plan or issuer;
- 2 (iii) be made in accordance with the
- 3 medical exigencies of the case involved, but
- 4 in no event later than 60 days (or 72
- 5 hours in the case of an expedited appeal)
- 6 from the date of completion of the filing of
- 7 notice of external appeal of the decision;
- 8 (iv) state, in layperson's language, the
- 9 basis for the determination, including, if
- 10 relevant, any basis in the terms or condi-
- 11 tions of the plan or coverage; and
- 12 (v) inform the participant, beneficiary,
- 13 or enrollee of the individual's rights to seek
- 14 further review by the courts (or other proc-
- 15 ess) of the external appeal determination.

16 (c) QUALIFICATIONS OF EXTERNAL APPEAL ENTI-
 17 TIES.—

18 (1) IN GENERAL.—For purposes of this section,
 19 the term “qualified external appeal entity” means,
 20 in relation to a plan or issuer, an entity (which may
 21 be a governmental entity) that is certified under
 22 paragraph (2) as meeting the following require-
 23 ments:

24 (A) There is no real or apparent conflict of
 25 interest that would impede the entity conduct-

ing external appeal activities independent of the plan or issuer.

(B) The entity conducts external appeal activities through clinical peers.

(C) The entity has sufficient medical, legal, and other expertise and sufficient staffing to conduct external appeal activities for the plan or issuer on a timely basis consistent with subsection (b)(3)(E).

(D) The entity meets such other requirements as the appropriate Secretary may impose.

(2) CERTIFICATION OF EXTERNAL APPEAL ENTITIES.—

(A) IN GENERAL.—In order to be treated as a qualified external appeal entity with respect to—

(i) a group health plan, the entity must be certified (and, in accordance with subparagraph (B), periodically recertified) as meeting the requirements of paragraph (1) by the Secretary of Labor (or under a process recognized or approved by the Secretary of Labor); or

1 (ii) a health insurance issuer operat-
 2 ing in a State, the entity must be certified
 3 (and, in accordance with subparagraph
 4 (B), periodically recertified) as meeting
 5 such requirements by the applicable State
 6 authority (or, if the State has not estab-
 7 lished an adequate certification and recer-
 8 tification process, by the Secretary of
 9 Health and Human Services, or under a
 10 process recognized or approved by such
 11 Secretary).

12 (B) RECERTIFICATION PROCESS.—The ap-
 13 propriate Secretary shall develop standards for
 14 the recertification of external appeal entities.
 15 Such standards shall include a specification
 16 of—

17 (i) the information required to be sub-
 18 mitted as a condition of recertification on
 19 the entity's performance of external appeal
 20 activities, which information shall include
 21 the number of cases reviewed, a summary
 22 of the disposition of those cases, the length
 23 of time in making determinations on those
 24 cases, and such information as may be nec-
 25 essary to assure the independence of the

1 entity from the plans or issuers for which
 2 external appeal activities are being con-
 3 ducted; and

4 (ii) the periodicity which recertifi-
 5 cation will be required.

6 (d) CONTINUING LEGAL RIGHTS OF ENROLLEES.—

7 Nothing in this title shall be construed as removing any
 8 legal rights of participants, beneficiaries, enrollees, and
 9 others under State or Federal law, including the right to
 10 file judicial actions to enforce rights.

11 **Subtitle E—Protecting the Doctor-** 12 **Patient Relationship**

13 **SEC. 141. PROHIBITION OF INTERFERENCE WITH CERTAIN** 14 **MEDICAL COMMUNICATIONS.**

15 (a) PROHIBITION.—

16 (1) GENERAL RULE.—The provisions of any
 17 contract or agreement, or the operation of any con-
 18 tract or agreement, between a group health plan or
 19 health insurance issuer in relation to health insur-
 20 ance coverage (including any partnership, associa-
 21 tion, or other organization that enters into or ad-
 22 ministers such a contract or agreement) and a
 23 health care provider (or group of health care provid-
 24 ers) shall not prohibit or restrict the provider from

1 engaging in medical communications with the pro-
2 vider's patient.

3 (2) NULLIFICATION.— Any contract provision
4 or agreement that restricts or prohibits medical com-
5 munications in violation of paragraph (1) shall be
6 null and void.

7 (b) RULES OF CONSTRUCTION.—Nothing in this sec-
8 tion shall be construed—

9 (1) to prohibit the enforcement, as part of a
10 contract or agreement to which a health care pro-
11 vider is a party, of any mutually agreed upon terms
12 and conditions, including terms and conditions re-
13 quiring a health care provider to participate in, and
14 cooperate with, all programs, policies, and proce-
15 dures developed or operated by a group health plan
16 or health insurance issuer to assure, review, or im-
17 prove the quality and effective utilization of health
18 care services (if such utilization is according to
19 guidelines or protocols that are based on clinical or
20 scientific evidence and the professional judgment of
21 the provider) but only if the guidelines or protocols
22 under such utilization do not prohibit or restrict
23 medical communications between providers and their
24 patients; or

1 (2) to permit a health care provider to mis-
 2 represent the scope of benefits covered under the
 3 group health plan or health insurance coverage or to
 4 otherwise require a group health plan health insur-
 5 ance issuer to reimburse providers for benefits not
 6 covered under the plan or coverage.

7 (c) MEDICAL COMMUNICATION DEFINED.—In this
 8 section:

9 (1) IN GENERAL.—The term “medical commu-
 10 nication” means any communication made by a
 11 health care provider with a patient of the health care
 12 provider (or the guardian or legal representative of
 13 such patient) with respect to—

14 (A) the patient’s health status, medical
 15 care, or treatment options;

16 (B) any utilization review requirements
 17 that may affect treatment options for the pa-
 18 tient; or

19 (C) any financial incentives that may af-
 20 fect the treatment of the patient.

21 (2) MISREPRESENTATION.—The term “medical
 22 communication” does not include a communication
 23 by a health care provider with a patient of the
 24 health care provider (or the guardian or legal rep-
 25 resentative of such patient) if the communication in-

1 volves a knowing or willful misrepresentation by
2 such provider.

3 **SEC. 142. PROHIBITION AGAINST TRANSFER OF INDEM-**
4 **NIFICATION OR IMPROPER INCENTIVE AR-**
5 **RANGEMENTS.**

6 (a) PROHIBITION OF TRANSFER OF INDEMNIFICA-
7 TION.—

8 (1) IN GENERAL.—No contract or agreement
9 between a group health plan or health insurance
10 issuer (or any agent acting on behalf of such a plan
11 or issuer) and a health care provider shall contain
12 any provision purporting to transfer to the health
13 care provider by indemnification or otherwise any li-
14 ability relating to activities, actions, or omissions of
15 the plan, issuer, or agent (as opposed to the pro-
16 vider).

17 (2) NULLIFICATION.—Any contract or agree-
18 ment provision described in paragraph (1) shall be
19 null and void.

20 (b) PROHIBITION OF IMPROPER PHYSICIAN INCEN-
21 TIVE PLANS.—

22 (1) IN GENERAL.—A group health plan and a
23 health insurance issuer offering health insurance
24 coverage may not operate any physician incentive
25 plan (as defined in subparagraph (B) of section

1 1876(i)(8) of the Social Security Act) unless the re-
 2 quirements described in subparagraph (A) of such
 3 section are met with respect to such a plan.

4 (2) APPLICATION.—For purposes of carrying
 5 out paragraph (1), any reference in section
 6 1876(i)(8) of the Social Security Act to the Sec-
 7 retary, an eligible organization, or an individual en-
 8 rolled with the organization shall be treated as a ref-
 9 erence to the applicable authority, a group health
 10 plan or health insurance issuer, respectively, and a
 11 participant, beneficiary, or enrollee with the plan or
 12 organization, respectively.

13 **SEC. 143. ADDITIONAL RULES REGARDING PARTICIPATION**
 14 **OF HEALTH CARE PROFESSIONALS.**

15 (a) PROCEDURES.—Insofar as a group health plan,
 16 or health insurance issuer that offers health insurance cov-
 17 erage, provides benefits through participating health care
 18 professionals, the plan or issuer shall establish reasonable
 19 procedures relating to the participation (under an agree-
 20 ment between a professional and the plan or issuer) of
 21 such professionals under the plan or coverage. Such proce-
 22 dures shall include—

23 (1) providing notice of the rules regarding par-
 24 ticipation;

1 (2) providing written notice of participation de-
2 cisions that are adverse to professionals; and

3 (3) providing a process within the plan or issuer
4 for appealing such adverse decisions, including the
5 presentation of information and views of the profes-
6 sional regarding such decision.

7 (b) CONSULTATION IN MEDICAL POLICIES.—A group
8 health plan, and health insurance issuer that offers health
9 insurance coverage, shall consult with participating physi-
10 cians (if any) regarding the plan’s or issuer’s medical pol-
11 icy, quality, and medical management procedures.

12 **SEC. 144. PROTECTION FOR PATIENT ADVOCACY.**

13 (a) PROTECTION FOR USE OF UTILIZATION REVIEW
14 AND GRIEVANCE PROCESS.—A group health plan, and a
15 health insurance issuer with respect to the provision of
16 health insurance coverage, may not retaliate against a par-
17 ticipant, beneficiary, enrollee, or health care provider
18 based on the participant’s, beneficiary’s, enrollee’s or pro-
19 vider’s use of, or participation in, a utilization review proc-
20 ess or a grievance process of the plan or issuer (including
21 an internal or external review or appeal process) under
22 this title.

23 (b) PROTECTION FOR QUALITY ADVOCACY BY
24 HEALTH CARE PROFESSIONALS.—

1 (1) IN GENERAL.—A group health plan or
2 health insurance issuer may not retaliate or dis-
3 criminate against a protected health care profes-
4 sional because the professional in good faith—

5 (A) discloses information relating to the
6 care, services, or conditions affecting one or
7 more participants, beneficiaries, or enrollees of
8 the plan or issuer to an appropriate public reg-
9 ulatory agency, an appropriate private accredi-
10 tation body, or appropriate management per-
11 sonnel of the plan or issuer; or

12 (B) initiates, cooperates, or otherwise par-
13 ticipates in an investigation or proceeding by
14 such an agency with respect to such care, serv-
15 ices, or conditions.

16 If an institutional health care provider is a partici-
17 pating provider with such a plan or issuer or other-
18 wise receives payments for benefits provided by such
19 a plan or issuer, the provisions of the previous sen-
20 tence shall apply to the provider in relation to care,
21 services, or conditions affecting one or more patients
22 within an institutional health care provider in the
23 same manner as they apply to the plan or issuer in
24 relation to care, services, or conditions provided to
25 one or more participants, beneficiaries, or enrollees;

1 and for purposes of applying this sentence, any ref-
2 erence to a plan or issuer is deemed a reference to
3 the institutional health care provider.

4 (2) GOOD FAITH ACTION.—For purposes of
5 paragraph (1), a protected health care professional
6 is considered to be acting in good faith with respect
7 to disclosure of information or participation if, with
8 respect to the information disclosed as part of the
9 action—

10 (A) the disclosure is made on the basis of
11 personal knowledge and is consistent with that
12 degree of learning and skill ordinarily possessed
13 by health care professionals with the same li-
14 censure or certification and the same experi-
15 ence;

16 (B) the professional reasonably believes the
17 information to be true;

18 (C) the information evidences either a vio-
19 lation of a law, rule, or regulation, of an appli-
20 cable accreditation standard, or of a generally
21 recognized professional or clinical standard or
22 that a patient is in imminent hazard of loss of
23 life or serious injury; and

24 (D) subject to subparagraphs (B) and (C)
25 of paragraph (3), the professional has followed

1 reasonable internal procedures of the plan,
2 issuer, or institutional health care provider es-
3 tablished for the purpose of addressing quality
4 concerns before making the disclosure.

5 (3) EXCEPTION AND SPECIAL RULE.—

6 (A) GENERAL EXCEPTION.—Paragraph (1)
7 does not protect disclosures that would violate
8 Federal or State law or diminish or impair the
9 rights of any person to the continued protection
10 of confidentiality of communications provided
11 by such law.

12 (B) NOTICE OF INTERNAL PROCEDURES.—
13 Subparagraph (D) of paragraph (2) shall not
14 apply unless the internal procedures involved
15 are reasonably expected to be known to the
16 health care professional involved. For purposes
17 of this subparagraph, a health care professional
18 is reasonably expected to know of internal pro-
19 cedures if those procedures have been made
20 available to the professional through distribu-
21 tion or posting.

22 (C) INTERNAL PROCEDURE EXCEPTION.—
23 Subparagraph (D) of paragraph (2) also shall
24 not apply if—

1 (i) the disclosure relates to an immi-
 2 nent hazard of loss of life or serious injury
 3 to a patient;

4 (ii) the disclosure is made to an ap-
 5 propriate private accreditation body pursu-
 6 ant to disclosure procedures established by
 7 the body; or

8 (iii) the disclosure is in response to an
 9 inquiry made in an investigation or pro-
 10 ceeding of an appropriate public regulatory
 11 agency and the information disclosed is
 12 limited to the scope of the investigation or
 13 proceeding.

14 (4) ADDITIONAL CONSIDERATIONS.—It shall
 15 not be a violation of paragraph (1) to take an ad-
 16 verse action against a protected health care profes-
 17 sional if the plan, issuer, or provider taking the ad-
 18 verse action involved demonstrates that it would
 19 have taken the same adverse action even in the ab-
 20 sence of the activities protected under such para-
 21 graph.

22 (5) NOTICE.—A group health plan, health in-
 23 surance issuer, and institutional health care provider
 24 shall post a notice, to be provided or approved by
 25 the Secretary of Labor, setting forth excerpts from,

1 or summaries of, the pertinent provisions of this
 2 subsection and information pertaining to enforce-
 3 ment of such provisions.

4 (6) CONSTRUCTIONS.—

5 (A) DETERMINATIONS OF COVERAGE.—

6 Nothing in this subsection shall be construed to
 7 prohibit a plan or issuer from making a deter-
 8 mination not to pay for a particular medical
 9 treatment or service or the services of a type of
 10 health care professional.

11 (B) ENFORCEMENT OF PEER REVIEW PRO-

12 TOCOLS AND INTERNAL PROCEDURES.—Noth-
 13 ing in this subsection shall be construed to pro-
 14 hibit a plan, issuer, or provider from establish-
 15 ing and enforcing reasonable peer review or uti-
 16 lization review protocols or determining whether
 17 a protected health care professional has com-
 18 plied with those protocols or from establishing
 19 and enforcing internal procedures for the pur-
 20 pose of addressing quality concerns.

21 (C) RELATION TO OTHER RIGHTS.—Noth-

22 ing in this subsection shall be construed to
 23 abridge rights of participants, beneficiaries, en-
 24 rollees, and protected health care professionals
 25 under other applicable Federal or State laws.

1 (7) PROTECTED HEALTH CARE PROFESSIONAL
 2 DEFINED.—For purposes of this subsection, the
 3 term “protected health care professional” means an
 4 individual who is a licensed or certified health care
 5 professional and who—

6 (A) with respect to a group health plan or
 7 health insurance issuer, is an employee of the
 8 plan or issuer or has a contract with the plan
 9 or issuer for provision of services for which ben-
 10 efits are available under the plan or issuer; or

11 (B) with respect to an institutional health
 12 care provider, is an employee of the provider or
 13 has a contract or other arrangement with the
 14 provider respecting the provision of health care
 15 services.

16 **Subtitle F—Promoting Good** 17 **Medical Practice**

18 **SEC. 151. PROMOTING GOOD MEDICAL PRACTICE.**

19 (a) PROHIBITING ARBITRARY LIMITATIONS OR CON-
 20 DITIONS FOR THE PROVISION OF SERVICES.—

21 (1) IN GENERAL.—A group health plan, and a
 22 health insurance issuer in connection with the provi-
 23 sion of health insurance coverage, may not arbitrar-
 24 ily interfere with or alter the decision of the treating
 25 physician regarding the manner or setting in which

1 particular services are delivered if the services are
2 medically necessary or appropriate for treatment or
3 diagnosis to the extent that such treatment or diag-
4 nosis is otherwise a covered benefit.

5 (2) CONSTRUCTION.—Paragraph (1) shall not
6 be construed as prohibiting a plan or issuer from
7 limiting the delivery of services to one or more
8 health care providers within a network of such pro-
9 viders.

10 (3) MANNER OR SETTING DEFINED.—In para-
11 graph (1), the term “manner or setting” means the
12 location of treatment, such as whether treatment is
13 provided on an inpatient or outpatient basis, and the
14 duration of treatment, such as the number of days
15 in a hospital. Such term does not include the cov-
16 erage of a particular service or treatment.

17 (b) NO CHANGE IN COVERAGE.—Subsection (a) shall
18 not be construed as requiring coverage of particular serv-
19 ices the coverage of which is otherwise not covered under
20 the terms of the plan or coverage or from conducting utili-
21 zation review activities consistent with this subsection.

22 (c) MEDICAL NECESSITY OR APPROPRIATENESS DE-
23 FINED.—In subsection (a), the term “medically necessary
24 or appropriate” means, with respect to a service or benefit,

1 a service or benefit which is consistent with generally ac-
 2 cepted principles of professional medical practice.

3 **SEC. 152. STANDARDS RELATING TO BENEFITS FOR CER-**
 4 **TAIN BREAST CANCER TREATMENT.**

5 (a) INPATIENT CARE.—

6 (1) IN GENERAL.—A group health plan, and a
 7 health insurance issuer offering group health insur-
 8 ance coverage, that provides medical and surgical
 9 benefits shall ensure that inpatient coverage with re-
 10 spect to the treatment of breast cancer is provided
 11 for a period of time as is determined by the attend-
 12 ing physician, in his or her professional judgment
 13 consistent with generally accepted medical stand-
 14 ards, in consultation with the patient, to be medi-
 15 cally appropriate following—

16 (A) a mastectomy;

17 (B) a lumpectomy; or

18 (C) a lymph node dissection for the treat-
 19 ment of breast cancer.

20 (2) EXCEPTION.—Nothing in this section shall
 21 be construed as requiring the provision of inpatient
 22 coverage if the attending physician and patient de-
 23 termine that a shorter period of hospital stay is
 24 medically appropriate.

1 (b) PROHIBITIONS.—A group health plan, and a
2 health insurance issuer offering group health insurance
3 coverage in connection with a group health plan, may
4 not—

5 (1) deny to a woman eligibility, or continued
6 eligibility, to enroll or to renew coverage under the
7 terms of the plan, solely for the purpose of avoiding
8 the requirements of this section;

9 (2) provide monetary payments or rebates to
10 women to encourage such women to accept less than
11 the minimum protections available under this sec-
12 tion;

13 (3) penalize or otherwise reduce or limit the re-
14 imbursement of an attending provider because such
15 provider provided care to an individual participant
16 or beneficiary in accordance with this section;

17 (4) provide incentives (monetary or otherwise)
18 to an attending provider to induce such provider to
19 provide care to an individual participant or bene-
20 ficiary in a manner inconsistent with this section; or

21 (5) subject to subsection (c)(3), restrict benefits
22 for any portion of a period within a hospital length
23 of stay required under subsection (a) in a manner
24 which is less favorable than the benefits provided for
25 any preceding portion of such stay.

1 (c) RULES OF CONSTRUCTION.—

2 (1) Nothing in this section shall be construed to
 3 require a woman who is a participant or
 4 beneficiary—

5 (A) to undergo a mastectomy or lymph
 6 node dissection in a hospital; or

7 (B) to stay in the hospital for a fixed pe-
 8 riod of time following a mastectomy or lymph
 9 node dissection.

10 (2) This section shall not apply with respect to
 11 any group health plan, or any group health insur-
 12 ance coverage offered by a health insurance issuer,
 13 which does not provide benefits for hospital lengths
 14 of stay in connection with a mastectomy or lymph
 15 node dissection for the treatment of breast cancer.

16 (3) Nothing in this section shall be construed as
 17 preventing a group health plan or issuer from impos-
 18 ing deductibles, coinsurance, or other cost-sharing in
 19 relation to benefits for hospital lengths of stay in
 20 connection with a mastectomy or lymph node dissec-
 21 tion for the treatment of breast cancer under the
 22 plan (or under health insurance coverage offered in
 23 connection with a group health plan), except that
 24 such coinsurance or other cost-sharing for any por-
 25 tion of a period within a hospital length of stay re-

1 quired under subsection (a) may not be greater than
 2 such coinsurance or cost-sharing for any preceding
 3 portion of such stay.

4 (d) LEVEL AND TYPE OF REIMBURSEMENTS.—Noth-
 5 ing in this section shall be construed to prevent a group
 6 health plan or a health insurance issuer offering group
 7 health insurance coverage from negotiating the level and
 8 type of reimbursement with a provider for care provided
 9 in accordance with this section.

10 (e) EXCEPTION FOR HEALTH INSURANCE COVERAGE
 11 IN CERTAIN STATES.—

12 (1) IN GENERAL.—The requirements of this
 13 section shall not apply with respect to health insur-
 14 ance coverage if there is a State law (as defined in
 15 section 2723(d)(1) of the Public Health Service Act)
 16 for a State that regulates such coverage that is de-
 17 scribed in any of the following subparagraphs:

18 (A) Such State law requires such coverage
 19 to provide for at least a 48-hour hospital length
 20 of stay following a mastectomy performed for
 21 treatment of breast cancer and at least a 24-
 22 hour hospital length of stay following a lymph
 23 node dissection for treatment of breast cancer.

24 (B) Such State law requires, in connection
 25 with such coverage for surgical treatment of

1 breast cancer, that the hospital length of stay
 2 for such care is left to the decision of (or re-
 3 quired to be made by) the attending provider in
 4 consultation with the woman involved.

5 (2) CONSTRUCTION.—Section 2723(a)(1) of the
 6 Public Health Service Act and section 731(a)(1) of
 7 the Employee Retirement Income Security Act of
 8 1974 shall not be construed as superseding a State
 9 law described in paragraph (1).

10 **Subtitle G—Definitions**

11 **SEC. 191. DEFINITIONS.**

12 (a) INCORPORATION OF GENERAL DEFINITIONS.—
 13 The provisions of section 2971 of the Public Health Serv-
 14 ice Act shall apply for purposes of this title in the same
 15 manner as they apply for purposes of title XXVII of such
 16 Act.

17 (b) SECRETARY.—Except as otherwise provided, the
 18 term “Secretary” means the Secretary of Health and
 19 Human Services, in consultation with the Secretary of
 20 Labor and the Secretary of the Treasury and the term
 21 “appropriate Secretary” means the Secretary of Health
 22 and Human Services in relation to carrying out this title
 23 under sections 2707 and 2753 of the Public Health Serv-
 24 ice Act and the Secretary of Labor in relation to carrying

1 out this title under section 714 of the Employee Retirement
2 Income Security Act of 1974.

3 (c) ADDITIONAL DEFINITIONS.—For purposes of this
4 title:

5 (1) APPLICABLE AUTHORITY.—The term “ap-
6 plicable authority” means—

7 (A) in the case of a group health plan, the
8 Secretary of Health and Human Services and
9 the Secretary of Labor; and

10 (B) in the case of a health insurance issuer
11 with respect to a specific provision of this title,
12 the applicable State authority (as defined in
13 section 2791(d) of the Public Health Service
14 Act), or the Secretary of Health and Human
15 Services, if such Secretary is enforcing such
16 provision under section 2722(a)(2) or
17 2761(a)(2) of the Public Health Service Act.

18 (2) CLINICAL PEER.—The term “clinical peer”
19 means, with respect to a review or appeal, a physi-
20 cian (allopathic or osteopathic) or other health care
21 professional who holds a non-restricted license in a
22 State and who is appropriately credentialed in the
23 same or similar specialty as typically manages the
24 medical condition, procedure, or treatment under re-
25 view or appeal and includes a pediatric specialist

1 where appropriate; except that only a physician may
2 be a clinical peer with respect to the review or ap-
3 peal of treatment rendered by a physician.

4 (3) HEALTH CARE PROVIDER.—The term
5 “health care provider” includes a physician or other
6 health care professional, as well as an institutional
7 provider of health care services.

8 (4) NONPARTICIPATING.—The term “non-
9 participating” means, with respect to a health care
10 provider that provides health care items and services
11 to a participant, beneficiary, or enrollee under group
12 health plan or health insurance coverage, a health
13 care provider that is not a participating health care
14 provider with respect to such items and services.

15 (5) PARTICIPATING.—The term “participating”
16 means, with respect to a health care provider that
17 provides health care items and services to a partici-
18 pant, beneficiary, or enrollee under group health
19 plan or health insurance coverage offered by a
20 health insurance issuer, a health care provider that
21 furnishes such items and services under a contract
22 or other arrangement with the plan or issuer.

1 **SEC. 192. PREEMPTION; STATE FLEXIBILITY; CONSTRUC-**
 2 **TION.**

3 (a) CONTINUED APPLICABILITY OF STATE LAW
 4 WITH RESPECT TO HEALTH INSURANCE ISSUERS.—

5 (1) IN GENERAL.—Subject to paragraph (2),
 6 this title shall not be construed to supersede any
 7 provision of State law which establishes, implements,
 8 or continues in effect any standard or requirement
 9 solely relating to health insurance issuers in connec-
 10 tion with group health insurance coverage except to
 11 the extent that such standard or requirement pre-
 12 vents the application of a requirement of this title.

13 (2) CONTINUED PREEMPTION WITH RESPECT
 14 TO GROUP HEALTH PLANS.—Nothing in this title
 15 shall be construed to affect or modify the provisions
 16 of section 514 of the Employee Retirement Income
 17 Security Act of 1974 with respect to group health
 18 plans.

19 (b) RULES OF CONSTRUCTION.—Except as provided
 20 in section 152, nothing in this title shall be construed as
 21 requiring a group health plan or health insurance coverage
 22 to provide specific benefits under the terms of such plan
 23 or coverage.

24 (c) DEFINITIONS.—For purposes of this section:

25 (1) STATE LAW.—The term “State law” in-
 26 cludes all laws, decisions, rules, regulations, or other

1 State action having the effect of law, of any State.
 2 A law of the United States applicable only to the
 3 District of Columbia shall be treated as a State law
 4 rather than a law of the United States.

5 (2) STATE.—The term “State” includes a
 6 State, the Northern Mariana Islands, any political
 7 subdivisions of a State or such Islands, or any agen-
 8 cy or instrumentality of either.

9 **SEC. 193. REGULATIONS.**

10 The Secretaries of Health and Human Services,
 11 Labor, and the Treasury shall issue such regulations as
 12 may be necessary or appropriate to carry out this title.
 13 Such regulations shall be issued consistent with section
 14 104 of Health Insurance Portability and Accountability
 15 Act of 1996. Such Secretaries may promulgate any in-
 16 terim final rules as the Secretaries determine are appro-
 17 priate to carry out this title.

1 **TITLE II—APPLICATION OF PA-**
 2 **TIENT PROTECTION STAND-**
 3 **ARDS TO GROUP HEALTH**
 4 **PLANS AND HEALTH INSUR-**
 5 **ANCE COVERAGE UNDER**
 6 **PUBLIC HEALTH SERVICE**
 7 **ACT**

8 **SEC. 201. APPLICATION TO GROUP HEALTH PLANS AND**
 9 **GROUP HEALTH INSURANCE COVERAGE.**

10 (a) IN GENERAL.—Subpart 2 of part A of title
 11 XXVII of the Public Health Service Act, as amended by
 12 the Omnibus Consolidated and Emergency Supplemental
 13 Appropriations Act, 1999 (Public Law 105–277), is
 14 amended by adding at the end the following new section:

15 **“SEC. 2707. PATIENT PROTECTION STANDARDS.**

16 “(a) IN GENERAL.—Each group health plan shall
 17 comply with patient protection requirements under title I
 18 of the Patients’ Bill of Rights Act of 1999, and each
 19 health insurance issuer shall comply with patient protec-
 20 tion requirements under such title with respect to group
 21 health insurance coverage it offers, and such requirements
 22 shall be deemed to be incorporated into this subsection.

23 “(b) NOTICE.—A group health plan shall comply with
 24 the notice requirement under section 711(d) of the Em-
 25 ployee Retirement Income Security Act of 1974 with re-

1 spect to the requirements referred to in subsection (a) and
 2 a health insurance issuer shall comply with such notice
 3 requirement as if such section applied to such issuer and
 4 such issuer were a group health plan.”.

5 (b) CONFORMING AMENDMENT.—Section
 6 2721(b)(2)(A) of the Public Health Service Act (42
 7 U.S.C. 300gg–21(b)(2)(A)) is amended by inserting
 8 “(other than section 2707)” after “requirements of such
 9 subparts”.

10 **SEC. 202. APPLICATION TO INDIVIDUAL HEALTH INSUR-**
 11 **ANCE COVERAGE.**

12 Subpart 3 of part B of title XXVII of the Public
 13 Health Service Act, as amended by the Omnibus Consoli-
 14 dated and Emergency Supplemental Appropriations Act,
 15 1999 (Public Law 105-277), is amended by adding at the
 16 end the following new section:

17 **“SEC. 2753. PATIENT PROTECTION STANDARDS.**

18 “(a) IN GENERAL.—Each health insurance issuer
 19 shall comply with patient protection requirements under
 20 title I of the Patients’ Bill of Rights Act of 1999 with
 21 respect to individual health insurance coverage it offers,
 22 and such requirements shall be deemed to be incorporated
 23 into this subsection.

24 “(b) NOTICE.—A health insurance issuer under this
 25 part shall comply with the notice requirement under sec-

tion 711(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of such title as if such section applied to such issuer and such issuer were a group health plan.”.

TITLE III—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277), is amended by adding at the end the following:

“SEC. 714. PATIENT PROTECTION STANDARDS.

“(a) IN GENERAL.—Subject to subsection (b), a group health plan (and a health insurance issuer offering group health insurance coverage in connection with such a plan) shall comply with the requirements of title I of the Patients’ Bill of Rights Act of 1999 (as in effect as

1 of the date of the enactment of such Act), and such re-
 2 quirements shall be deemed to be incorporated into this
 3 subsection.

4 “(b) PLAN SATISFACTION OF CERTAIN REQUIRE-
 5 MENTS.—

6 “(1) SATISFACTION OF CERTAIN REQUIRE-
 7 MENTS THROUGH INSURANCE.—For purposes of
 8 subsection (a), insofar as a group health plan pro-
 9 vides benefits in the form of health insurance cov-
 10 erage through a health insurance issuer, the plan
 11 shall be treated as meeting the following require-
 12 ments of title I of the Patients’ Bill of Rights Act
 13 of 1999 with respect to such benefits and not be
 14 considered as failing to meet such requirements be-
 15 cause of a failure of the issuer to meet such require-
 16 ments so long as the plan sponsor or its representa-
 17 tives did not cause such failure by the issuer:

18 “(A) Section 101 (relating to access to
 19 emergency care).

20 “(B) Section 102(a)(1) (relating to offer-
 21 ing option to purchase point-of-service cov-
 22 erage), but only insofar as the plan is meeting
 23 such requirement through an agreement with
 24 the issuer to offer the option to purchase point-
 25 of-service coverage under such section.

1 “(C) Section 103 (relating to choice of pro-
2 viders).

3 “(D) Section 104 (relating to access to
4 specialty care).

5 “(E) Section 105(a)(1) (relating to con-
6 tinuity in case of termination of provider con-
7 tract) and section 105(a)(2) (relating to con-
8 tinuity in case of termination of issuer con-
9 tract), but only insofar as a replacement issuer
10 assumes the obligation for continuity of care.

11 “(F) Section 106 (relating to coverage for
12 individuals participating in approved clinical
13 trials.)

14 “(G) Section 107 (relating to access to
15 needed prescription drugs).

16 “(H) Section 108 (relating to adequacy of
17 provider network).

18 “(I) Subtitle B (relating to quality assur-
19 ance).

20 “(J) Section 143 (relating to additional
21 rules regarding participation of health care pro-
22 fessionals).

23 “(K) Section 152 (relating to standards re-
24 lating to benefits for certain breast cancer
25 treatment).

1 “(2) INFORMATION.—With respect to informa-
2 tion required to be provided or made available under
3 section 121, in the case of a group health plan that
4 provides benefits in the form of health insurance
5 coverage through a health insurance issuer, the Sec-
6 retary shall determine the circumstances under
7 which the plan is not required to provide or make
8 available the information (and is not liable for the
9 issuer’s failure to provide or make available the in-
10 formation), if the issuer is obligated to provide and
11 make available (or provides and makes available)
12 such information.

13 “(3) GRIEVANCE AND INTERNAL APPEALS.—
14 With respect to the grievance system and internal
15 appeals process required to be established under sec-
16 tions 131 and 132, in the case of a group health
17 plan that provides benefits in the form of health in-
18 surance coverage through a health insurance issuer,
19 the Secretary shall determine the circumstances
20 under which the plan is not required to provide for
21 such system and process (and is not liable for the
22 issuer’s failure to provide for such system and proc-
23 ess), if the issuer is obligated to provide for (and
24 provides for) such system and process.

1 “(4) EXTERNAL APPEALS.—Pursuant to rules
2 of the Secretary, insofar as a group health plan en-
3 ters into a contract with a qualified external appeal
4 entity for the conduct of external appeal activities in
5 accordance with section 133, the plan shall be treat-
6 ed as meeting the requirement of such section and
7 is not liable for the entity’s failure to meet any re-
8 quirements under such section.

9 “(5) APPLICATION TO PROHIBITIONS.—Pursu-
10 ant to rules of the Secretary, if a health insurance
11 issuer offers health insurance coverage in connection
12 with a group health plan and takes an action in vio-
13 lation of any of the following sections, the group
14 health plan shall not be liable for such violation un-
15 less the plan caused such violation:

16 “(A) Section 109 (relating to non-
17 discrimination in delivery of services).

18 “(B) Section 141 (relating to prohibition
19 of interference with certain medical communica-
20 tions).

21 “(C) Section 142 (relating to prohibition
22 against transfer of indemnification or improper
23 incentive arrangements).

24 “(D) Section 144 (relating to prohibition
25 on retaliation).

1 “(E) Section 151 (relating to promoting
2 good medical practice).

3 “(6) CONSTRUCTION.—Nothing in this sub-
4 section shall be construed to affect or modify the re-
5 sponsibilities of the fiduciaries of a group health
6 plan under part 4 of subtitle B.

7 “(7) APPLICATION TO CERTAIN PROHIBITIONS
8 AGAINST RETALIATION.—With respect to compliance
9 with the requirements of section 144(b)(1) of the
10 Patients’ Bill of Rights Act of 1999, for purposes of
11 this subtitle the term ‘group health plan’ is deemed
12 to include a reference to an institutional health care
13 provider.

14 “(c) ENFORCEMENT OF CERTAIN REQUIREMENTS.—

15 “(1) COMPLAINTS.—Any protected health care
16 professional who believes that the professional has
17 been retaliated or discriminated against in violation
18 of section 144(b)(1) of the Patients’ Bill of Rights
19 Act of 1999 may file with the Secretary a complaint
20 within 180 days of the date of the alleged retaliation
21 or discrimination.

22 “(2) INVESTIGATION.—The Secretary shall in-
23 vestigate such complaints and shall determine if a
24 violation of such section has occurred and, if so,
25 shall issue an order to ensure that the protected

1 health care professional does not suffer any loss of
2 position, pay, or benefits in relation to the plan,
3 issuer, or provider involved, as a result of the viola-
4 tion found by the Secretary.

5 “(d) CONFORMING REGULATIONS.—The Secretary
6 may issue regulations to coordinate the requirements on
7 group health plans under this section with the require-
8 ments imposed under the other provisions of this title.”.

9 (b) SATISFACTION OF ERISA CLAIMS PROCEDURE
10 REQUIREMENT.—Section 503 of the Employee Retirement
11 Income Security Act of 1974 (29 U.S.C. 1133) is amended
12 by inserting “(a)” after “SEC. 503.” and by adding at
13 the end the following new subsection:

14 “(b) In the case of a group health plan (as defined
15 in section 733) compliance with the requirements of sub-
16 title D (and section 115) of title I of the Patients’ Bill
17 of Rights Act of 1999 in the case of a claims denial shall
18 be deemed compliance with subsection (a) with respect to
19 such claims denial.”.

20 (c) CONFORMING AMENDMENTS.—

21 (1) Section 732(a) of the Employee Retirement
22 Income Security Act of 1974 (29 U.S.C. 1185(a)) is
23 amended by striking “section 711” and inserting
24 “sections 711 and 714”.

1 (2) The table of contents in section 1 of the
 2 Employee Retirement Income Security Act of 1974,
 3 as amended by the Omnibus Consolidated and
 4 Emergency Supplemental Appropriations Act, 1999
 5 (Public Law 105–277), is amended by inserting
 6 after the item relating to section 713 the following
 7 new item:

“Sec. 714. Patient protection standards.”.

8 (3) Section 502(b)(3) of the Employee Retire-
 9 ment Income Security Act of 1974 (29 U.S.C.
 10 1132(b)(3)) is amended by inserting “(other than
 11 section 144(b))” after “part 7”.

12 **SEC. 302. ERISA PREEMPTION NOT TO APPLY TO CERTAIN**
 13 **ACTIONS INVOLVING HEALTH INSURANCE**
 14 **POLICYHOLDERS.**

15 (a) IN GENERAL.—Section 514 of the Employee Re-
 16 tirement Income Security Act of 1974 (29 U.S.C. 1144)
 17 is amended by adding at the end the following subsection:

18 “(e) PREEMPTION NOT TO APPLY TO CERTAIN AC-
 19 TIONS ARISING OUT OF PROVISION OF HEALTH BENE-
 20 FITS.—

21 “(1) IN GENERAL.—Except as provided in this
 22 subsection, nothing in this title shall be construed to
 23 invalidate, impair, or supersede any cause of action
 24 brought by a plan participant or beneficiary (or the
 25 estate of a plan participant or beneficiary) under

1 State law to recover damages resulting from per-
2 sonal injury or for wrongful death against any
3 person—

4 “(A) in connection with the provision of in-
5 surance, administrative services, or medical
6 services by such person to or for a group health
7 plan (as defined in section 733), or

8 “(B) that arises out of the arrangement by
9 such person for the provision of such insurance,
10 administrative services, or medical services by
11 other persons.

12 “(2) EXCEPTION FOR EMPLOYERS AND OTHER
13 PLAN SPONSORS.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graph (B), paragraph (1) does not authorize—

16 “(i) any cause of action against an
17 employer or other plan sponsor maintain-
18 ing the group health plan or against an
19 employee of such an employer or sponsor
20 acting within the scope of employment, or

21 “(ii) a right of recovery or indemnity
22 by a person against an employer or other
23 plan sponsor (or such an employee) for
24 damages assessed against the person pur-

1 suant to a cause of action under paragraph
2 (1).

3 “(B) SPECIAL RULE.—Subparagraph (A)
4 shall not preclude any cause of action described
5 in paragraph (1) against an employer or other
6 plan sponsor (or against an employee of such
7 an employer or sponsor acting within the scope
8 of employment) if—

9 “(i) such action is based on the em-
10 ployer’s or other plan sponsor’s (or em-
11 ployee’s) exercise of discretionary authority
12 to make a decision on a claim for benefits
13 covered under the plan or health insurance
14 coverage in the case at issue; and

15 “(ii) the exercise by such employer or
16 other plan sponsor (or employee of such
17 authority) resulted in personal injury or
18 wrongful death.

19 “(3) CONSTRUCTION.—Nothing in this sub-
20 section shall be construed as permitting a cause of
21 action under State law for the failure to provide an
22 item or service which is not covered under the group
23 health plan involved.

24 “(4) PERSONAL INJURY DEFINED.—For pur-
25 poses of this subsection, the term ‘personal injury’

1 means a physical injury and includes an injury arising out of the treatment (or failure to treat) a mental illness or disease.”.

4 (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to acts and omissions occurring on or after the date of the enactment of this Act from which a cause of action arises.

8 **TITLE IV—EFFECTIVE DATES;** 9 **COORDINATION IN IMPLE-** 10 **MENTATION**

11 **SEC. 401. EFFECTIVE DATES AND RELATED RULES.**

12 (a) GROUP HEALTH COVERAGE.—

13 (1) IN GENERAL.—Subject to paragraph (2),
14 the amendments made by sections 201(a), 301, and
15 401 (and title I insofar as it relates to such sections)
16 shall apply with respect to group health plans, and
17 health insurance coverage offered in connection with
18 group health plans, for plan years beginning on or
19 after January 1, 2000 (in this section referred to as
20 the “general effective date”).

21 (2) TREATMENT OF COLLECTIVE BARGAINING
22 AGREEMENTS.—In the case of a group health plan
23 maintained pursuant to 1 or more collective bargaining
24 agreements between employee representatives
25 and 1 or more employers ratified before the date of

1 enactment of this Act, the amendments made by sec-
 2 tions 201(a), 301, and 401 (and title I insofar as it
 3 relates to such sections) shall not apply to plan
 4 years beginning before the later of—

5 (A) the date on which the last collective
 6 bargaining agreements relating to the plan ter-
 7 minates (determined without regard to any ex-
 8 tension thereof agreed to after the date of en-
 9 actment of this Act), or

10 (B) the general effective date.

11 For purposes of subparagraph (A), any plan amend-
 12 ment made pursuant to a collective bargaining
 13 agreement relating to the plan which amends the
 14 plan solely to conform to any requirement added by
 15 this Act shall not be treated as a termination of
 16 such collective bargaining agreement.

17 (b) INDIVIDUAL HEALTH INSURANCE COVERAGE.—

18 The amendments made by section 202 shall apply with
 19 respect to individual health insurance coverage offered,
 20 sold, issued, renewed, in effect, or operated in the individ-
 21 ual market on or after the general effective date.

22 (c) TREATMENT OF RELIGIOUS NONMEDICAL PRO-
 23 VIDERS.—

24 (1) IN GENERAL.—Nothing in this Act (or the
 25 amendments made thereby) shall be construed to—

1 (A) restrict or limit the right of group
2 health plans, and of health insurance issuers of-
3 fering health insurance coverage, to include as
4 providers religious nonmedical providers;

5 (B) require such plans or issuers to—

6 (i) utilize medically based eligibility
7 standards or criteria in deciding provider
8 status of religious nonmedical providers;

9 (ii) use medical professionals or cri-
10 teria to decide patient access to religious
11 nonmedical providers;

12 (iii) utilize medical professionals or
13 criteria in making decisions in internal or
14 external appeals regarding coverage for
15 care by religious nonmedical providers; or

16 (iv) compel a participant or bene-
17 ficiary to undergo a medical examination
18 or test as a condition of receiving health
19 insurance coverage for treatment by a reli-
20 gious nonmedical provider; or

21 (C) require such plans or issuers to ex-
22 clude religious nonmedical providers because
23 they do not provide medical or other required
24 data, if such data is inconsistent with the reli-

1 gious nonmedical treatment or nursing care
2 provided by the provider.

3 (2) RELIGIOUS NONMEDICAL PROVIDER.—For
4 purposes of this subsection, the term “religious non-
5 medical provider” means a provider who provides no
6 medical care but who provides only religious non-
7 medical treatment or religious nonmedical nursing
8 care.

9 **SEC. 402. COORDINATION IN IMPLEMENTATION.**

10 Section 104(1) of Health Insurance Portability and
11 Accountability Act of 1996 is amended by striking “this
12 subtitle (and the amendments made by this subtitle and
13 section 401)” and inserting “the provisions of part 7 of
14 subtitle B of title I of the Employee Retirement Income
15 Security Act of 1974, the provisions of parts A and C of
16 title XXVII of the Public Health Service Act, and title
17 I of the Patients’ Bill of Rights Act of 1999”.

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